



**CERTIFIED
COPY**

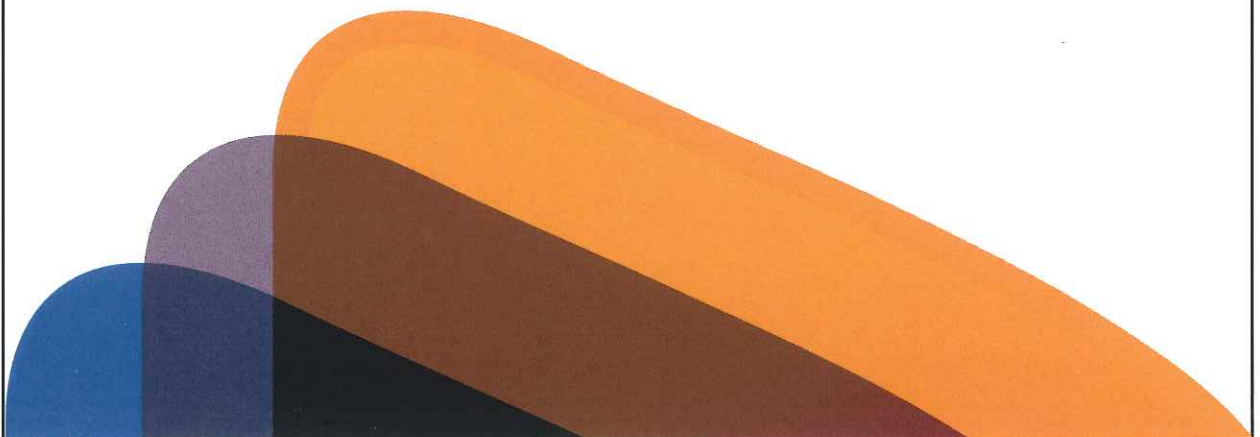
In the Matter Of:

Rhoades vs County Commission of Marion County et al

SAMUEL DEWITT FAULKNER

October 02, 2019

Job Number: 565278



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

3 Civil Action No.: 1:18CV186

4 Judge: Thomas S. Kleeh

5 CHRISTY J. RHOADES, in her capacity)
6 as the ADMINISTRATRIX and PERSONAL)
7 REPRESENTATIVE of the ESTATE OF,)
8 PHILIP JONTZ RHOADES,)
9)
10 Plaintiff,)
11 vs.)
12)

13 COUNTY COMMISSION OF MARION COUNTY;)
14 MARION COUNTY SHERIFF'S DEPARTMENT;)
15 DAVID FORSYTH, in his official and)
16 individual capacity; and JOHN DOE,)
17 in his official and individual capacity,)
18)
19 Defendants.)
20)

21 DEPOSITION OF SAMUEL DEWITT FAULKNER

22 DATE: October 2, 2019

23 TIME: 9:55 o'clock a.m.

24 PLACE: 416 NW 3rd Street
25 Okeechobee, Florida

26 TAKEN BY: Plaintiff

27 REPORTER: KIMBERLY POGUE, Notary Public
28 of State of Florida at Large

29 JOB NO.: 565278

1 APPEARANCES:

2 FOR PLAINTIFF: CRANSTON & EDWARDS, PLLC
1200 Dorsey Avenue, Suite II
3 Morgantown, WV 26501
(304)296-3500
4 BY: J. BRYAN EDWARDS, ESQUIRE

5 FOR PLAINTIFF: UMINA LEGAL, PLLC
157 Walnut Street
6 Morgantown, WV 26505
(304)838-8024
7 BY: RYAN J. UMINA, ESQUIRE
8

9 FOR DEFENDANT: PULLIN, FOWLER, FLANAGAN,
BROWN & POE, PLLC
10 2414 Cranberry Square
Morgantown, WV 26508
11 (304)225-2200
BY: TIFFANY R. DURST, ESQUIRE
12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -
I N D E X
- - -

WITNESS: DIRECT CROSS REDIRECT RECROSS
SAMUEL DEWITT FAULKNER
BY MR. EDWARDS 4

- - -
N O E X H I B I T S M A R K E D
- - -

PAGE
113
114

Certificate of Oath
Certificate of Reporter

1 AND THEREUPON,

2 SAMUEL DEWITT FAULKNER

3 called as a witness herein, after having been first duly
4 sworn, was examined and testified as follows:

5 THE WITNESS: I do.

6 DIRECT EXAMINATION

7 BY MR. EDWARDS:

8 Q Mr. Faulkner, will you please state your full
9 name for the record, please?

10 A Samuel Dewitt Faulkner, F-A-U-L-K-N-E-R.

11 Q Mr. Faulkner, we're here to take your
12 deposition today. It's my understanding you've probably
13 been deposed numerous times. Is that correct?

14 A Yes, sir.

15 Q Okay. So you pretty much know the rules of
16 the game here and I'm not going to waste a whole lot of
17 time going over them. The only thing that I will tell
18 you, that I'm not sure how long we're going to be here
19 today. If at any point in time you need to take a
20 break, that is fine, just let me know. The only caveat
21 to that is if I've asked a question, I would ask that
22 you answer that question prior to taking a break. Fair
23 enough?

24 A Yes, sir.

25 Q Okay. Is there any reason, as you sit here

1 today, that you don't feel like you're able to give a
2 deposition?

3 A No, sir.

4 Q Okay. No mental or physical ailments of any
5 type?

6 A No, sir.

7 Q Okay. Mr. Faulkner, as part of the
8 deposition, I have served you with a subpoena duces
9 tecum that asked you to bring all the material that you
10 have been provided and/or generated in this case. And
11 prior to going on the record here today, I reviewed some
12 stuff very briefly. There's two boxes, say box one of
13 two, over there that it looks like it contains a lot of
14 the discovery material.

15 And in addition, you have a book that's soft,
16 I'll say, well, it's bound with a binder but it's not a
17 hard copy, of the S.T.O.P.S., Strategics (sic) and
18 Tactics of Patrol Stops by Bob Magnuson that you have
19 here.

20 And there is a three-ring binder titled Roads
21 of the Marion County Sheriff's, West Virginia.

22 Is this the complete copy of everything that
23 you have that you've received and reviewed in this case?

24 A To the best of my knowledge, it is.

25 Q Okay. Contained in the three-ring binder are

1 some flash drives that I didn't open up, but you told
2 me, prior to going onto the record, that they -- what do
3 the flash drives contain?

4 A I believe they're electronic copies of the
5 materials in there.

6 Q Okay.

7 A And I did put on them everything I relied on,
8 the articles that I've referenced and sent as exhibits.

9 Q Okay.

10 A And the additional material that's been sent
11 other than that -- the box, I've got a lot of
12 depositions that were sent electronically and I put
13 those on the flash drives.

14 Q Are these flash drives for me to take or are
15 these part of your file?

16 A They're part of my file. You're welcome to
17 copy them to your computer if you care to.

18 Q Okay. In addition, there is some
19 correspondence between you and Ms. Durst and some
20 billing material or invoices to Ms. Durst. Is that
21 correct?

22 A Yes, sir.

23 Q Are these a complete and total copy of all the
24 invoices that you have sent in this case?

25 A I believe they are.

1 Q Okay. What about any correspondence between
2 you and Ms. Durst, have you provided copies of all
3 those?

4 A No, I haven't.

5 Q Okay. That was one thing that was asked for
6 on the subpoena duces tecum, so I'm going to ask that
7 that be produced.

8 MS. DURST: Well, and I will note, under the
9 federal rules, to the extent that he did not rely on any
10 information contained in the communications or
11 correspondence, that information is not discoverable,
12 and I would direct him not to produce that. We can
13 address that, but that's specifically in the federal
14 rules.

15 If there's something, a communication that he
16 relied upon to formulate his opinions, then that would
17 be discoverable; but otherwise, the communications would
18 not be discoverable.

19 BY MR. EDWARDS:

20 Q Anything in the communications that you've
21 received from Ms. Durst that you relied on in
22 recommending your opinions?

23 A No, sir.

24 Q Okay. Do you have this manual, this
25 S.T.O.P.S. manual, on a flash drive?

1 A No, sir, I don't.

2 Q Okay.

3 A I've got the pages that I used but not the
4 whole manual.

5 Q All right. I would ask that that be -- a copy
6 of this be produced for me, a complete copy of the
7 S.T.O.P.S. manual.

8 MS. DURST: Is that -- the only problem, is
9 that a copyrighted material?

10 THE WITNESS: Yes.

11 MS. DURST: I can't have him making material
12 that's copyrighted.

13 MR. EDWARDS: Well, he's relied upon it and I
14 don't have access to it. I've tried to find it and I'm
15 not able to locate it.

16 MS. DURST: He didn't rely on the whole
17 manual, he gave you the provisions from the manual.

18 We can figure that out, but I'm not going to
19 have him violate copyright laws by producing a whole
20 copy of a manual for something if it's copyrighted.

21 MR. EDWARDS: Well, he's already produced
22 copies of it so I don't think you can pick and choose as
23 far as reports. So I'm going to put on the record that
24 I want a complete copy of this manual. Okay?

25 MS. DURST: And I'm noting my objection to

1 that.

2 MR. EDWARDS: Fine.

3 BY MR. EDWARDS:

4 Q All right. Mr. Faulkner, if Deputy Forsyth
5 jumped out of his cruiser on August 2nd, 2017, and
6 immediately upon seeing the Jeep at the gas well site,
7 opened fire, that would be objectively unreasonable,
8 would it not?

9 A If the Jeep was just sitting there, yes.

10 Q Okay. Meaning that if he was -- I understand
11 that caveat, but if he just pulled up to a gas well
12 site, opened his car door and began firing, do you
13 believe that he would be -- that could be reasonable?

14 A Yes, it could.

15 Q Okay. On what ground would that have been
16 reasonable?

17 A It would be based on the actions of the Jeep.

18 Q Okay. Tell me what actions the Jeep would
19 have to take in order for it to be reasonable that
20 Deputy Forsyth would be able to pull into the gas well
21 site, open up his door and immediately begin firing.

22 A If the Jeep was driving at or toward Deputy
23 Forsyth.

24 Q Okay. Would it have been reasonable for
25 Deputy Forsyth to jump out of his car if that was the

1 case?

2 A That's consistent with training.

3 Q Jumping out of a car in front of a moving
4 vehicle is consistent with training?

5 A I did not say that, sir, and you know I didn't
6 say that.

7 Q I believe you did, but go ahead and explain.

8 A In training, basically you never let anyone's
9 feet hit the ground before yours, because you don't know
10 what this threat entails. You don't know if the person
11 inside there is armed.

12 If you are inside your vehicle, you have very
13 limited movement. In fact, at that point, in training,
14 the vehicle is labeled a kill box, because any round
15 that goes in the vehicle can ricochet all over the
16 vehicle, we now have the rounds coming in, we have
17 limited movement or evasive movement from the officer
18 inside the vehicle. And you've got glass coming at you,
19 you've got projectiles possibly coming at you.

20 So training is that the law enforcement
21 officer's feet hit the ground first.

22 Q Okay. What training? What training did
23 Deputy Forsyth have that, to your knowledge, that
24 indicates that would have been proper?

25 A That's training at the West Virginia State

1 Police Academy.

2 Q Okay. What specific training at the West
3 Virginia State Police Academy?

4 A It would have been in subject control and in
5 traffic stops.

6 Q Okay. Have you reviewed what specific
7 training Deputy Forsyth had at the West Virginia State
8 Police Academy?

9 A I haven't. But West Virginia state troopers
10 have been up to the academy and taken the S.T.O.P.S.
11 course and I'm familiar with what they -- you know,
12 certainly what was taught and taught to them.

13 Q Okay. So you don't know what training Deputy
14 Forsyth may or may not have had at the West Virginia
15 State Police Academy. Is that true?

16 A I don't know what exact training. I'm sure it
17 was very good.

18 Q So it's your testimony that it could be
19 reasonable for him to have pulled into the gas well site
20 on August 2nd, 2017, opened up his door and began firing
21 immediately.

22 A If he was facing imminent threat or serious
23 bodily harm or death, certainly.

24 Q Okay. If the Jeep was not moving toward
25 Deputy Forsyth on August 2nd, 2017 at the gas well site

1 and he opened fire and shot Philip Rhoades, would that
2 have been objectively unreasonable?

3 A Yes, it would.

4 Q Would you agree that all the alleged wrongful
5 conduct of Philip Rhoades on both July 25th, 2017, as
6 well as August 2nd, 2017 were a result of police chasing
7 him?

8 A Yes, sir.

9 Q In going through your resume that you provided
10 in this case, and let me show you this, I may have this
11 marked Exhibit 1, has any of that information changed or
12 been updated since when it was provided and filed on
13 July 1st, 2019?

14 A There would have been an additional training
15 at -- I don't know whether it's called West Virginia
16 University or University of West Virginia. I did
17 training for law enforcement in the state.

18 Q When was that?

19 A That would have been probably a month ago,
20 maybe a month, month and a half ago.

21 Q Okay. And what exactly training did you
22 perform and where?

23 A It would have been eight hours of training in
24 response to resistance, the training that I always do.

25 And then there was a -- I was in trial

1 probably ten days to two weeks ago in Cleveland.

2 Q What was the name of that case?

3 A Wilson versus the State of Ohio.

4 Q Who were the attorneys involved in that case?

5 A George Gerken.

6 Q George Gerken?

7 A Was the attorney I was working with.

8 And Attorney Generals, I don't know which ones
9 that they were.

10 Q Was Mr. Gerken representing the State of Ohio?

11 A Excuse me?

12 Q Who was Mr. Gerken representing?

13 A Mr. Wilson.

14 Q Mr. Wilson. Okay.

15 A CO Wilson, yes. Corrections Officer.

16 Q What type of case was this?

17 A A criminal case.

18 Q And was this in the Circuit Court or --

19 A Court of Common Pleas.

20 Q Court of Common Pleas. In what county?

21 A Cuyahoga County.

22 Q The training that you did at West Virginia,
23 was it at West Virginia University?

24 A It was in Morgantown. I don't know how many
25 branches they have.

1 Q Okay. And who provided the seminar, who was
2 doing this, putting on this training?

3 A It was the university.

4 Q The university was doing this?

5 A Yes.

6 Q Okay. And when was the date of that?

7 A I don't know the exact date. I'd say a month
8 and a half ago.

9 Q Who retained you to come up there and do that?

10 A University.

11 Q Was it for the university police department or
12 whom?

13 A It was -- the university officers were there;
14 law enforcement agencies, sheriff's department, state
15 police were there. It was opened up to pretty well
16 across the state.

17 Q Okay. In looking through your resume, it
18 appears that you received a bachelor's degree from Hiram
19 College in education in June 1971. Is that correct?

20 A Yes, sir.

21 Q Okay. And thereafter, you received a master's
22 in physical education from Kent State in 1997.

23 A Yes, sir.

24 Q Okay. I don't see any other degrees that you
25 have attained from any other institutions of higher

1 education. Is that correct?

2 A No, I did post-master's work at Wright State
3 University. They never did get the Ph.D. program there,
4 they tried with the Board of Regents and they never got
5 it. So I just took the classes.

6 And then Northwestern University, College of
7 Staff and Command.

8 Q Okay. Again, did not receive any type of
9 degree from Northwestern University. Is that correct?

10 A It would have been the certificate of
11 completion for that.

12 Q Okay. What did that involve?

13 A There are three basic, we'll call them gold
14 medal programs for law enforcement. One would be, I'm
15 sure you're familiar with the FBI Academy, and then
16 PELC, Police Leadership College, and then Northwestern
17 University. I took the one at Northwestern.

18 Q How long was that program?

19 A I don't know exactly. Eight weeks, 12 weeks.
20 There would be -- it would go usually one month out of
21 the year and then you'd have assignments and then, you
22 know, back in class.

23 Q Okay. And when did you attend Northwestern
24 University Center for Public Safety and Traffic
25 Institute?

1 A I don't know. I don't recall the date if it's
2 not on here.

3 Q Your work experience looks like from 1983 to
4 '84, you worked as a probation officer in Portage
5 County. Is that correct?

6 A That's correct.

7 Q And how long total, was it less than a year or
8 more than a year?

9 A Right around a year. I mean, just pretty well
10 exactly a year.

11 During that time, I took my law enforcement
12 training and then was -- I was commissioned through
13 Portage County Sheriff's Office. Then I took a position
14 at Robinson Memorial Hospital with the county hospital,
15 uniform patrol at the county hospital, did that for
16 four, four and a half years, then was hired by Kent
17 State City.

18 Q Okay.

19 A The City of Kent.

20 Q If you can just hold off, I'm going to go
21 through and have some specific questions with each of
22 these.

23 A Okay.

24 Q So just to keep us from backtracking.

25 A All right, that's fine.

1 Q All right. As a probation officer, did you do
2 anything other than supervise people on probation for
3 Portage County?

4 A No. It was a state program, intensive
5 supervision of adult felons.

6 Q Okay. You weren't doing any type of arresting
7 or anything like that. Is that correct?

8 A Not for probation but I did as a deputy.

9 Q Okay. And you worked part-time there at
10 Portage County from '84 to '87. Is that correct?

11 A Yes, sir.

12 Q Okay. And your resume says working on drugs.
13 What exactly does that mean?

14 A In the sheriff's department, I did the
15 undercover drug work and surveillance, that type of
16 stuff.

17 Q Okay. Then warrant service meaning just serve
18 warrants on people?

19 A Yes.

20 Q Okay. And extradition of prisoners?

21 A Yes.

22 Q Does that mean basically going to pick up
23 people and bringing them back or transporting them?

24 A They would fly me around the country and I'd
25 transport prisoners.

1 Q Okay. Did you actively act as a sheriff's
2 deputy, meaning did you do patrols at that point in
3 time?

4 A No, I did not.

5 Q Okay. So no patrol work from '84 to '87. Is
6 that correct?

7 A That's correct.

8 Q Okay. In '87, you also did some work for the
9 City of Kent Police Department. Is that correct?

10 A Yes, sir.

11 Q It says you were there from '87 to '87. How
12 long were you actually there?

13 A Probably about eight months.

14 Q Okay. And what exactly did you do for the
15 City of Kent Police Department?

16 A Uniform patrol.

17 Q Okay. Is that the first time you ever did any
18 type of uniform patrol?

19 A Yeah. Well, other than the hospital.

20 Q Okay. It looks like the hospital was from
21 2000 to 2004.

22 A I believe so.

23 Q I'm sorry. No, that was the airport. I
24 didn't mean to misspeak.

25 A Oh, okay. You're right.

1 Q All right. So you were also hired as an
2 officer for the hospital. Is that correct?

3 A Yes, sir.

4 Q Okay. I'm assuming that you didn't -- well,
5 maybe I shouldn't assume. How many felony stops did you
6 do for the hospital?

7 A Classic felony stops, none.

8 Q Okay.

9 A High-risk, some.

10 Q Okay. What high-risk stops did you do for the
11 hospital?

12 A Well, one was a person bringing a shotgun to
13 the hospital, then we had an individual with knives, and
14 those type of things.

15 Q Okay. City of Kent, did you do any type of --
16 any traffic felony stops?

17 A I don't think I had felony stops there.

18 Q Okay. It looks like you held a commission as
19 a deputy sheriff with the Madison County Sheriff's
20 Office from '87 to 2000. Is that correct?

21 A Yes, sir.

22 Q Were you an active deputy sheriff with Madison
23 County Sheriff's Office?

24 A I did some training for them.

25 Q Okay. You didn't do any type of felony stops

1 for them?

2 A No. Training but no --

3 Q Okay.

4 A -- no road.

5 Q And then you went to the Port of Columbus. Is
6 that correct?

7 A That was just voluntary, yes.

8 Q All right. So that was a voluntary position?

9 A Yes. It was not paid. I was after 911, I
10 went there to assist.

11 Q Okay. Did you do any type of felony stops
12 there at the Columbus airport?

13 A Again, not classic felony stops as we would
14 talk about, but high-risk, yes.

15 Q Okay. Again, what was the high-risk stops
16 that you did there?

17 A People running on warrants, you know, weapons
18 found and that type of stuff.

19 Q Okay. Did you operate a patrol vehicle?

20 A Yes.

21 Q Any type of felony stops involving vehicles?

22 A Not classic felony stops, no.

23 Q Okay. When you say not classic, what are you
24 referring to?

25 A That would be outlined in a training manual,

1 you know, multiple vehicles involved, multiple law
2 enforcement vehicles involved, the stopping of the
3 vehicle, the positioning of the vehicle, ordering people
4 out, that type of stuff.

5 Q Okay. Your next job, it appears to be from
6 2004 to 2008 in Mechanicsburg PD.

7 A Yes, sir.

8 Q You were a part-time uniformed patrol. Is
9 that correct?

10 A Yes, sir.

11 Q Okay. How often did you work there?

12 A Usually multiple times a week.

13 Q Okay. How many full-time officers are there
14 in -- at that time were there in Mechanicsburg PD?

15 A I believe there were four full-time.

16 Q That include the chief?

17 A Yes, sir.

18 Q Okay. With regard to that, how many felony
19 stops -- classic felony stops did you perform from 2004
20 to 2008?

21 A Classic, none.

22 Q Okay.

23 A High-risk, a number.

24 Q Okay. From '87 to January 2009, it states you
25 were a full-time Ohio Peace Training Academy. Your

1 title was law enforcement training specialist. Is that
2 correct?

3 A It is, sir.

4 Q What exactly did that entail?

5 A I did, basically, train the trainers classes
6 for -- very different in Ohio than in West Virginia.
7 Everybody in West Virginia is trained at the West
8 Virginia State Police Academy; in Ohio, you'll have as
9 many as 110 basic training sites.

10 I would have trained any trainer that trained
11 at any one of those sites, and also the trainers in
12 private security, corrections and bailiffs.

13 Q And what did you train them on?

14 A Anything in the force spectrum. Anything from
15 officer presence, verbalization, through pressure
16 points, joint locks, takedowns, handcuffing, ground
17 stabilization, ground tactics, aerosol agents,
18 conductive energy devices, refers to tasers, batons and
19 combative firearms; force-on-force training.

20 Q Did you train them at all with regard to
21 traffic stops?

22 A Yes, sir.

23 Q And what exactly did you train them on it?
24 What training did you provide to them for traffic stops?

25 A It would have been the S.T.O.P.S. training.

1 That was the manual we used.

2 Q Everything in this manual here? I say this
3 manual here, it's the manual that we've referred to
4 earlier at deposition, the Strategics and Tactics Of
5 Patrol Stops.

6 A That would be the basis for the training, yes,
7 sir.

8 Q Okay. Did you train everything that's
9 included in this, that's included in this manual?

10 A That's the instructor's manual. The basic
11 manual wouldn't be quite as entailed as that.

12 Q Okay. So I guess my question is, what
13 portions of this manual did you teach?

14 A It would be every portion of it.

15 Q Okay.

16 A Usually for traffic, you've got a one-week
17 course, you know, a 40-hour course. And so you're going
18 to get as much as you can and you'll cover every topic,
19 but you may not be able to do actual field training
20 walk-throughs with every type of stop, you know, a
21 3-foot offset, a 20-foot offset, left or right, a corner
22 stop, you wouldn't be able to get to all of those. You
23 would discuss them and maybe walk through them, but you
24 wouldn't do role playing on every single -- there
25 wouldn't be enough time.

1 Q Okay. In regard to that, what in your
2 background or qualifications gave you the qualifications
3 to teach that manual, to teach the traffic stops?

4 A Just my total law enforcement background and
5 the training in the area.

6 Q Okay. And have we missed anything to date
7 with regards to what your law enforcement background and
8 training was?

9 A No, sir.

10 Q Okay. So we've covered all that?

11 A Yes, sir.

12 Q Okay. Why did you leave as a law enforcement
13 training specialist at the Ohio Peace Officer's Training
14 Academy?

15 A I retired.

16 Q You retired.

17 A Yeah, I took a -- I just kind of made a
18 commitment with myself that when I turned 60, I was
19 going to stop wrestling around with kids that were three
20 times my size and at one-third my age; five surgeries.
21 I mean, if you're going to do force-on-force training,
22 you know, it's tough on the body.

23 So I, at age 60, I had my time in and retired.

24 Q Okay. It also appears that in December of
25 2008 through December 2013, you served as the chief of

1 police for Mechanicsburg. Is that correct?

2 A Yes, sir.

3 Q Okay. Any felony traffic stops that you
4 performed in that role?

5 A Not felony traffic stops, we didn't have
6 enough cruisers or officers to do classic stops, but
7 certainly high-risk stops and stops with assisting
8 agencies.

9 Q How many full-time officers did you have
10 during that time period?

11 A Four.

12 Q Four? Okay.

13 And you indicated you never participated in
14 any traffic felony -- classic felony stops. Is that
15 correct?

16 A No, we didn't, not with positioning of the
17 vehicles and all that, no.

18 Q Did you ever have a situation where you had to
19 use your firearm?

20 A Only for animals.

21 Q Okay. Is that true throughout your entire
22 career?

23 A Yes, sir.

24 Q Okay. Why did you leave Mechanicsburg in
25 December of 2013?

1 A I had given the mayor a five-year commitment,
2 that was up, and I retired from that.

3 Q Okay. Were you ever asked to leave?

4 A Oh, no, sir.

5 Q Okay. In your initial expert disclosure, you
6 state that you've been retained in over 450
7 police-related cases. Is that correct?

8 A Yes, sir.

9 Q Okay. How many of those cases have been civil
10 cases?

11 A Probably maybe 95 percent. 90, 95 percent I
12 would think.

13 Q And how many times have you actually testified
14 at trial in those cases?

15 A I would say, I'm just going to guess, maybe
16 100, 120, something like that.

17 Q Have you ever been retained as an expert for a
18 plaintiff against a police officer or a police
19 department?

20 A Not in a civil case, no, sir.

21 Q Have you ever testified against a police
22 officer?

23 A Yes, sir.

24 Q When was that?

25 A A number of times in criminal cases.

1 If a law enforcement officer has done
2 something wrong, we need to get him out of the
3 profession.

4 And so I've done a number of cases where they
5 were wrong, and one was convicted of -- not murder but a
6 lesser charge.

7 I had assaults, things like that.

8 Q If you look at your resume, and this is under
9 the last four years.

10 A Yes, sir.

11 Q In any of the cases listed there, are those
12 cases where you testified against a police officer in a
13 criminal case?

14 A Some of them would be.

15 I believe State of Ohio V James Truckey.

16 Q That's number 13?

17 A Yes, sir.

18 Q And you believe you testified against the --
19 was Mr. Truckey a police officer?

20 A I believe.

21 Q Okay. Do you recall any of the facts and
22 circumstances around that case?

23 A On that one, no, I don't.

24 Q Okay.

25 A Number 17, Marquel Ali was a police officer

1 when the alleged wrongdoing happened, and so I testified
2 against him.

3 Q What was the facts and circumstances of that
4 case?

5 A He had been -- he was the driver, another
6 person in the car. There was a substantial quantity of
7 drugs found in the trunk of the car, in his bag, and so
8 it was a drug-related case.

9 Q Okay. He was suing the City of Beckley?

10 A Yes.

11 Q I'm assuming -- well, again, I shouldn't
12 assume. Were you there on behalf of the City of
13 Beckley?

14 A Yes, sir.

15 Q What was the nature of the charges? I mean,
16 what was the nature of the lawsuit then? He was a
17 police officer. Did it have anything to do with the
18 fact that he was -- I mean, did that really have
19 anything to do with the case?

20 A I don't know how to answer that.

21 I'm sure it had something to do with the case,
22 yeah.

23 Q Okay. Well, what were you called to testify
24 about?

25 A Police practices, yeah.

1 Q Okay. Was he indicating that the City of
2 Beckley Police Department did something wrong in his
3 arrest?

4 A Yes.

5 Q Okay. So I guess my question goes, again, the
6 fact that he was a police officer really wasn't germane
7 to what you were doing, he was basically making the
8 claim they did something improper in his arrest.

9 A Yes. He was not involved in a police function
10 when that happened.

11 Q Okay. So when you state that you testified
12 against a police officer, it's just who he happened
13 maybe to be, but it wasn't involved in his duties as a
14 police officer. Is that correct?

15 A Right. Right. He was a police officer doing
16 wrongdoings.

17 Q Okay. With regard to any other criminal cases
18 that you've testified against a police officer for
19 wrongdoings, can you point out any of those?

20 A It would have been 11.

21 Q Okay.

22 A Bolton.

23 Q You testified for the prosecutor? What was
24 Mr. Bolton accused of doing?

25 A I may get the two -- there were two cases, I

1 can't remember which name was which. One of them, there
2 was an officer called to a bar fight. When he
3 arrived -- they had body cams so we could use that.

4 The person was down on the ground being held
5 down by a friend. Officer ordered the friend off.

6 The individual, I guess, grabbed the officer's
7 leg. The officer punched him a number of times and
8 sprayed with an aerosol agent.

9 He was handcuffed, got him up, walked him to a
10 cruiser, started to put him in the cruiser. The kid
11 didn't want to go in. It's, you know, pretty common.
12 He went around and pulled the kid in the cruiser.

13 All of that was -- I mean, at that point, I
14 wasn't crazy about it but, you know, at least there was
15 an argument that could be made.

16 And then, you know, when the kid was in the
17 cruiser, it's over. Instead of closing the door, he
18 pulled the kid backwards, hit him in the head three or
19 four times with the door, sat him up and punched him in
20 the back of the head. That's wrong. You just don't do
21 that.

22 Q Okay.

23 A And then after that, when he found out there
24 was a video, he went to the other agency that had backed
25 up and said, I need the video for evidence, never turned

1 the video in. It was just all kinds of things that were
2 wrong. So we had to get him out of the profession.

3 Q Okay. So he was having criminal charges
4 brought against him.

5 A Yes, sir.

6 Q Okay.

7 A The other was an officer was --

8 Q And when you say the other, is this
9 Mr. Truckey or is this something else?

10 A It would be -- I may have Bolton and Truckey's
11 name, I may have the cases backwards.

12 Q Fair enough.

13 A I'm just saying I can't remember the names.

14 Q Okay.

15 A I can give you the fact patterns.

16 Q Sure.

17 A Officer called to an audible alarm at a
18 building. He checked the building, no damage, no open
19 doors or anything like that.

20 He heard, a street over, a quadrunner start up
21 and, you know, just went and checked it out, tried to
22 stop the quadrunner. It was a guy who left the bar. He
23 happened to be intoxicated and had a person on the back
24 of the bike as a passenger that was just looking for a
25 ride. It turned out to be a pursuit against the

1 quadrunner.

2 He wound up, while the quadrunner was running,
3 pulling up and firing a taser at the driver. Luckily
4 that missed. And then it went on for a while.

5 The quadrunner gets bogged down then in some
6 mud. Another officer had the guy down and handcuffed.

7 This guy ran up, got down in his face, yelled
8 at him, punched him in the face, busted his head open,
9 went up and ran up, did it to the other guy. We just
10 don't do that, that's wrong.

11 Q Okay. And criminal charges were brought
12 against that officer?

13 A Yes. Found guilty. Yes.

14 Q Okay. Any other?

15 A I think that's it in this group.

16 Q Okay. Do you have any names that you can
17 recall beyond this that's listed here?

18 A Let me think. Talley. Talley was --

19 Q What's that?

20 A -- in Cleveland.

21 Q Is that the State of Ohio versus Talley?

22 A Versus Talley. Yeah. He was -- well, that
23 one.

24 Q What was that about?

25 A That was an officer that had not -- done a

1 questionable act at a police department, was allowed to
2 resign instead of being terminated, which I'm not in
3 favor of, went to another department and got an off-duty
4 gig at Dillard's Department Store, which was, you know,
5 you go in your uniform, it was all authorized through
6 the PD.

7 He went the first day just to meet the people,
8 wasn't in uniform or anything, and was in the control
9 room where they've got all the cameras. And an
10 individual was looking at leather coats. And the kid
11 did steal a coat. You know, there's no question about
12 that, he stole one of the coats.

13 And Talley, although not on duty or anything,
14 went out, intercepted the kid, grabbed him by the scruff
15 of the neck, and it was defined as -- it looked like a
16 principal taking a middle-schooler to the office, walked
17 him off camera.

18 Now I can only rely on the testimony of the
19 individuals, of the employees there. I had three
20 supervisors in a break room.

21 He took him to the holding room. And they had
22 already called the police. And the kid didn't want to
23 go in the holding room so he took him down to the
24 ground. I have no problem with that. Handcuffed him,
25 no problem with that.

1 But then when he was handcuffed, he scooped
2 him up. One of the witnesses said he was on his knee,
3 two of the other witnesses say he picked him up to a
4 standing position and dropped him on his head, knocked
5 him unconscious. Squad called, broken collarbone.

6 There were a lot of problems in this case,
7 police problems and medical problems. Because they
8 thought he was just a crackhead, they didn't do adequate
9 medical treatment, they sent him back to the PD.

10 The problem was this was a black sheep
11 family -- black sheep of a black family that owned --
12 very prominent, owned a number of funeral homes in the
13 Cleveland area.

14 And the mother had been through this,
15 unfortunately, a number of times before, was coming to
16 pick him up at the police department. When she walked
17 in the door, he leaned over and started throwing up.

18 The officer looked at her and said, ma'am, you
19 need to take him to the hospital, that's a sign of
20 possible head injury.

21 By the time they got him to the hospital, he
22 died. They had fractured his skull from above his orbit
23 all the way down, basilar fracture around the skull, up
24 to the other side.

25 The prosecutor from Cleveland, Bowral

1 (phonetic), who's kind of a god to the cops up there,
2 testified that was a force equivalent to handcuffing a
3 person, having them fall unimpeded two stories and
4 landing on solid concrete.

5 That is totally against what law enforcement
6 is trained to do. Had to get him out of the profession.

7 Q Any other cases that you can recall?

8 A There are but I can't -- I can't think of them
9 right offhand.

10 Q Okay.

11 A There have been a number.

12 Q Okay. Have you ever testified against a
13 police department?

14 A Yes. If I believe an officer is right, if the
15 officer is follow their training, I'll testify for the
16 officer. If they didn't follow their training, I'll
17 testify for the police department.

18 Q Okay. But my question is, have you ever been
19 involved in a case, retained in a case, where you've
20 testified against a police department?

21 A Not in a civil case, a plaintiff, no.

22 Q Okay.

23 A But in law enforcement profession, yes.

24 Q When you say law enforcement profession --

25 A The way I explained it to you. Was the

1 officer right or was the police department right?

2 Q I understand. Okay. So that would have been
3 in a criminal aspect, but never in a civil case have you
4 ever testified against a police department.

5 A It would be in criminal, arbitration, and I
6 believe some civil cases.

7 Q Okay. I'm somewhat confused by your answer
8 now.

9 All right. In what context would you have
10 testified against a police department in a civil case?
11 And I'm going to exclude employment matters.

12 A If they were, say, suing to get their job back
13 or that type of stuff.

14 Q Okay.

15 A Yeah.

16 Q So it would be -- that would only involve
17 employment matters. Correct?

18 A I believe in that case, yes.

19 Q Okay. Well, has there been any cases that
20 you --

21 A In the case -- not that case, but in the type
22 of case you're outlining, I believe so.

23 Q Okay. All right. So you've never been
24 retained to testify against a police department in a
25 civil aspect that didn't involve some type of employment

1 matter.

2 A That's correct.

3 I mean, I'm often called by plaintiff's
4 attorney, I will listen to anybody, I'll tell them -- I
5 believe I have an ethical responsibility to tell them
6 exactly what we train police to do.

7 And if they give me a fact pattern, you know,
8 and it's not favorable, I'll say, Counselor, if you can
9 prove that, you don't need me. I'll give them some
10 names who will take the case. It's just right now, at
11 70, I have -- I have all the work I need.

12 Q Okay.

13 A I mean, and my whole career was law
14 enforcement. I won't say we'll always do it right. If
15 they don't do it right, I'll work to get them out of the
16 profession. But I just don't take cases against --
17 civil cases against law enforcement.

18 Q Okay. You indicate that you've been qualified
19 in state and federal courts in defense tactics --

20 A Yes, sir.

21 Q -- subject control --

22 A Yes, sir.

23 Q -- and police procedures.

24 A Yes, sir. Policies, procedures, practices.

25 Q Okay. And that's what I was going to ask you.

1 What police procedures have you been qualified as an
2 expert in?

3 A I don't know how to answer that. Could you
4 explain?

5 Q Well, I don't know. You list it as police
6 procedures so I don't know what police procedures you're
7 referring to in your report.

8 So what exactly -- are these police procedures
9 as relates to defense tactics and subject control?

10 A It could be anything around a stop; how the
11 stop was initiated, the probable cause issues,
12 reasonable suspicion issues, search issues, follow-up
13 procedures.

14 Q And again, I want to make sure these are
15 things that you've been qualified as an expert to
16 testify in courts. Are you telling me you've been
17 qualified as an expert to testify in court regarding
18 those matters?

19 A Yes, sir.

20 Q Okay.

21 A Yes, sir.

22 After force was used through whatnot, was a
23 medical follow-up appropriate, consistent with law
24 enforcement best practices, the investigation that
25 followed. Anything, you know, related to issues like

1 that.

2 And it's even, a very strange case, I taught a
3 class in law enforcement, developing a winning attitude.
4 And in one case, a judge said, you know, I was an expert
5 in attitude, so. I mean, I don't know, I just work
6 here.

7 Q Okay. Have you ever been not qualified to
8 give an expert opinion by a court?

9 A Not on qualifications.

10 Q Okay. What were you not qualified to do then?

11 A I think one or two was in like summary
12 judgment, it was limited only to -- in a summary
13 judgment issue, limited only to an area related to the
14 loss. I don't understand exactly what the finding was
15 there but it was in a summary judgment issue.

16 And there was a period of time in West
17 Virginia, and I can't remember the judge's name, but one
18 of the districts, the judge made the decision that
19 experts aren't needed in empty-hand issues.

20 In other words, if it was incorrect
21 handcuffing, that's fine; if it was a taser aerosol.

22 But if it was an empty-hand control issue, he
23 said that the jury would be able to understand that by
24 themselves. No experts were needed.

25 Now since then, that's changed and I've

1 testified in that district then, but that happened I
2 believe on two occasions.

3 Q When you said the district, you think those
4 were federal courts?

5 A Yes, federal court.

6 Q Do you know if those were the Southern or
7 Northern District?

8 A I don't remember.

9 Q Okay. Do you know how long ago that would
10 have been?

11 A Probably. Time goes so fast. Eight, ten, 12,
12 maybe 14 years. I don't remember.

13 Q Any recollection of the attorneys involved in
14 those cases?

15 A I can't say specifically, but there's a good
16 chance it was Pullin, Fowler, Flanagan, Brown & Poe or
17 Steptoe & Johnson.

18 THE COURT REPORTER: I'm sorry. Pullin,
19 Fowler --

20 MS. DURST: Pullin. My firm name.

21 THE WITNESS: I'll try to slow down.

22 THE COURT REPORTER: Or the other firm?

23 THE WITNESS: Steptoe & Johnson.

24 BY MR. EDWARDS:

25 Q So you indicated there was a period of time

1 where open-hand or empty-hands, you were not allowed to
2 testify as an expert?

3 A Yes, sir.

4 Q And there was a time on summary judgment where
5 your expert testimony was not allowed. Is that your
6 understanding?

7 A It was -- it was only to one of the issues. I
8 don't understand. I mean --

9 Q Okay. Do you know where that court was or --

10 A I don't, sir.

11 Q Okay. Any other time where you were giving
12 testimony at trial where a court excluded your testimony
13 or a portion thereof?

14 A I don't recall.

15 Q Is there anything today that's prohibiting you
16 from recalling other than time?

17 A No, I just -- I believe there was an issue in
18 magistrates court, now we're looking probably 20 years
19 ago. I believe it was the City of Dayton might have
20 been involved. But, again, it was a strange one.

21 An individual kidnapped a lady. There was a
22 high-speed pursuit. The car crashed. An officer broke
23 the window, took the lady out of the window, and then
24 they arrested that guy. She sued the law enforcement
25 officers.

1 And I was asked, had I ever broken a window
2 and pulled somebody out of a window, and I said, no, I
3 had never done that in my career.

4 And then he said, okay, we're not going to
5 testify on that then.

6 Q Okay.

7 A He said I was eminently qualified in training,
8 but the issue is taking the person out of a window, and
9 so --

10 Q Okay. Any other times with regard to where
11 your testimony was excluded that you can recall here
12 today?

13 A No.

14 Q Okay. It appears from your resume that you've
15 only been qualified as an expert in the topics of
16 defense tactics, subject control and police procedures.
17 Is that correct?

18 A Practice, procedures, policies. Yes, sir.

19 Q And you're not attempting to provide expert
20 opinions in any other subjects as it relates to this
21 case. Is that correct?

22 A No.

23 Q In formulating your opinion from the initial
24 disclosure, you list 24 different things that you
25 reviewed. Did you review any other documents or

1 materials other than those listed in that disclosure in
2 formulating the opinions in that initial disclosure?

3 A In the initial -- in the first paper?

4 Q Yes.

5 A Yes. In the supplement, I believe there's
6 additional things that were reviewed.

7 Q No, no, no. I understand and I appreciate it,
8 but you didn't understand my question, I don't believe.

9 A I don't believe.

10 Q With regard to the initial disclosure, your
11 first disclosure that you made in this case, you listed
12 24 things that you reviewed.

13 A Okay.

14 Q As it relates to the opinions in that
15 disclosure, did you review any other material?

16 A I don't believe so.

17 Q Okay. Are you sure about that or do you know
18 for certain?

19 A I don't believe so.

20 Q Okay.

21 A If I would have reviewed it, I would have
22 listed it.

23 Q All right. And in that list, I do not see any
24 listing of any training material used to train either
25 Deputy Forsyth or Deputy Love. Is that correct?

1 A Correct.

2 Q Okay. So as it relates to this, you're not
3 going to provide an opinion as to the adequacy of either
4 Deputy Love or Deputy Forsyth's training. Is that
5 correct?

6 A Oh, I could if I'm asked. I'm very familiar
7 with West Virginia State Police Academy, I've been
8 there.

9 Q Okay. I understand that.

10 A I've trained there.

11 And their trainers, they were constantly
12 coming up to the academy. I've trained every trainer
13 there since probably 1990; Eddie Sinclair (phonetic);
14 and then it was Jess Gundy who went on to run the
15 academy; and then it was Bob -- Trooper Petry, who's now
16 Lieutenant Petry, in charge of the certification in
17 standards; and then most recently, it's now Corporal
18 Barker, I just had him in training. So I've trained all
19 those people.

20 Q Okay. In this regard, I think I asked you
21 this question early on, you do not know specifically
22 what training Deputy Forsyth may or may not have had
23 prior to August 2nd, 2017. Is that correct?

24 A Other than his basic training at the academy,
25 correct, sir.

1 Q And you haven't reviewed any documents as that
2 relates to when he went through the academy, what he may
3 have been trained on or wasn't trained on. Is that
4 correct?

5 A Correct, sir.

6 Q Okay. With regard to Deputy Forsyth -- I'm
7 sorry -- Deputy Love's training, he hadn't been through
8 the academy at that point in time. Is that correct?

9 A Correct, sir.

10 Q When I say that point in time, I meant August
11 2nd, 2017.

12 A Correct, sir.

13 Q And you did not review any material that he
14 may have been trained on as it relates from the Marion
15 County Sheriff's Department. Is that correct?

16 A That's correct, sir.

17 Q Okay. So other than what you believe may --
18 they may have been trained on, when I say they, Deputy
19 Forsyth may have been trained, you don't -- you aren't
20 able to give an opinion as to the adequacy of either of
21 their training as of August 2nd, 2017. Is that correct?

22 A Correct.

23 Q Okay. I was trying to do some math in my head
24 but probably not all that well. How much have you been
25 paid to date for your expert -- for your retained expert

1 in this case?

2 A I believe it's about \$7,000.

3 Q Okay. And how much did you bill total last
4 year as an expert in cases?

5 A Each year, it's usually between 60 to \$80,000.

6 Q As you sit here, do you know an exact number
7 or a closer number than that for last year?

8 A No, sir, I don't.

9 Q Okay. What about this year, how much have you
10 billed to date?

11 A This year, probably about \$80,000 at this
12 point.

13 Q Okay. So we're right at the beginning of
14 October and you're right around \$80,000.

15 A Correct, sir.

16 Q Okay. How many times have you been retained
17 in cases by defendant's counsel, Pullin, Fowler,
18 Flanagan, Brown & Poe?

19 A Oh, I couldn't render a guess. There's been a
20 number.

21 Q I'm sorry, I'm not laughing, but I'm sure
22 there has been a number. Is that number high, is it --
23 you know, you said you've been retained over 450 times
24 in civil cases -- I'm sorry, that's an unfair
25 question -- in cases you've acted as an expert over 450

1 times. You indicated 95 percent of those have been for
2 civil cases. So my question is, is that number over
3 200?

4 A Oh, no, sir.

5 Q Is it over 100?

6 A I don't believe so.

7 Q Okay. Do you believe it's between 50 and 100?

8 A Very possibly, yes, sir.

9 Q Okay. So you believe that in the cases you've
10 been retained for in civil matters, you've been retained
11 by Ms. Durst's firm, Pullin, Fowler, Flanagan, Brown &
12 Poe, between 50 and 100 times?

13 A I would guess that. I would think probably
14 more in the 50, 60, 70 range, but it's just, it's a
15 guess. I mean, it's been a lot of years.

16 Q Okay. So you've had a long relationship with
17 that firm.

18 A Since it was Pullin, Fowler & Flanagan.

19 Q Okay. And so 20 years? Longer?

20 A Probably -- probably longer.

21 Q Okay. And along with Ms. Durst, you've acted
22 as an expert for Chip Williams?

23 A Yes, sir.

24 Q Keith Gamble?

25 A Yes, sir.

1 Q Theresa Kirk?

2 A Yes, sir.

3 Q Who else with the firm have you been retained
4 in cases with at that firm?

5 A Jimmy Brown.

6 MS. DURST: Johnnie.

7 THE WITNESS: Johnnie Brown. I'm sorry.

8 Duane Ruggier, Mr. Pullin, Vic Flanagan.

9 Those are the ones I can just come up with off
10 the top of my head.

11 BY MR. EDWARDS:

12 Q It may have been an easier question to ask you
13 which ones you haven't been retained by at this point.

14 A No, it's a lot of attorneys.

15 Q And in looking, it looks like in fact you,
16 along with Keith Gamble and Chip Williams, presented and
17 authored a seminar called, "How to avoid the pitfalls of
18 police liability: What you know could hurt you," in
19 2012. Does that sound familiar?

20 A Probably a Lorman seminar, I think.

21 Q Okay.

22 A Yes, sir.

23 Q Have you done more than one of those with that
24 firm?

25 A Yes, sir.

1 Oh. Well, some with them and some with other
2 firms.

3 Q Okay. I want to ask you about some statements
4 here, I'm just going to read some things and ask you
5 whether you agree with them or not. Okay?

6 A Okay.

7 Q Do you agree that it would be a severe officer
8 safety violation for an officer just to pull up to a
9 potential shooting scene, announcing that they were an
10 officer, illuminating themselves, and making an easy and
11 convenient target?

12 A That would -- tactically, it wouldn't be the
13 best thing to do.

14 Q Okay. Well, do you have any problems with
15 that statement?

16 A If the officer puts himself at risk.

17 Q Okay. So you don't think that's a reasonable
18 thing for an officer to do.

19 A See, we have two different things.

20 Is he violating any constitutional right? No.

21 Q Correct.

22 A Has he put him or herself at risk? Yes.

23 Q Okay. Do you agree that ultimately, it's the
24 job of the jury or the court to decide the question of
25 whether or not the responses of law enforcement officers

1 used were reasonable?

2 A Yes, sir.

3 Q Would you agree that the inadequacy of police
4 training may serve as a basis for a municipal liability
5 where absence of training amounts to deliberate
6 indifference for the rights of persons whom the police
7 come into contact?

8 A Yes, sir.

9 Q For high-risk stops, do you agree that you
10 should stay in a low-profile position behind an open
11 cruiser door while conducting a high-risk stop?

12 A You'd have to give me a lot more than that.

13 Q Okay. Well, just as a general training for
14 high-risk stops, do you agree that that's one of the
15 things you should do?

16 A Again, what type of stop?

17 Q A high-risk felony stop.

18 A Understand my confusion, if I -- if I respond
19 to a bank alarm, that's a high-risk stop.

20 I mean, what are we -- you've got to give me
21 more. I don't understand, you know --

22 Q If someone is pursuing another vehicle --

23 A Okay.

24 Q -- and you believe it to be a high-risk or a
25 felony stop --

1 A Okay.

2 Q -- do you think that you stay in a low-profile
3 position behind an open cruiser door while conducting a
4 high-risk stop?

5 A That's part of training, but we have to have a
6 lot of things fall in place before that happens.

7 Q Okay. Do you approach the vehicle?

8 A It depends. Again, it depends on what's
9 happening.

10 Q Okay. Well I'm asking you, as part of
11 training for high-risk stops, is that part of your
12 training?

13 A The confusion -- and I see it with Mr. Root,
14 it's the same thing. When you have high-risk stops,
15 that's a plethora of stuff. I mean, there are times
16 when you have -- that you will put yourself at risk to
17 keep risk from somebody else.

18 If we're talking about classic training of a
19 classic felony stop, where the person has complied with
20 your commands and either is pulled over, has wrecked
21 their vehicle, or the vehicle has just run out of gas or
22 something, and we are allowed to position our cruisers,
23 and we are -- and we can then open the doors and get
24 adequate people, and we can get him to follow our
25 commands like, sir, turn off your vehicle, put your keys

1 on the hood, if they'll do all that, then it is
2 training, it is correct, you stay behind your door and
3 you bring them out one at a time, you bring them back to
4 a secure area, you secure them one at a time. And once
5 everybody's out of the vehicle, then you'll do a
6 distraction and drive a vehicle up and keep the noise of
7 the motor going to check the trunk and -- but we have so
8 many things that have to happen for that to take place.

9 Q Okay. I understand.

10 But you train -- you indicated you train
11 people or you use this S.T.O.P.S. manual for doing
12 high-risk felony stops. Correct?

13 A For classic high-risk felony stops, and then
14 they'll also be -- we do in there, try to do some of the
15 variables because, you know, no plan survives initial
16 contact with the individual, and if it's going well,
17 it's probably an ambush. I mean --

18 Q Well, that's one of the reasons why you are
19 trained to stay behind a door, to have some type of
20 defense. Is that correct?

21 A If you can.

22 Q Okay. If you can.

23 A But again --

24 Q I'm sorry, I didn't mean to interrupt. Go
25 ahead.

1 A If we look at a specific case, if I have a
2 vehicle coming at me, standing behind a door is probably
3 the worst place I could possibly be.

4 Q Standing in front of it would be even worse,
5 wouldn't it?

6 A It would give me at least an option to move.

7 Q Okay. All right. So let's go through this
8 again. With regard to your training that you're
9 familiar with, is it proper to stay in a low-profile
10 position behind an open cruiser door when conducting a
11 high-risk stop?

12 A It could be.

13 Q Okay. Would it be appropriate not to approach
14 the vehicle?

15 A It could be.

16 Q Okay. And that's something, how a reasonable
17 officer or someone would conduct themselves during a
18 high-risk stop.

19 A If all the variables call for that, yes.

20 Q Okay. Prior to doing this stop, should you
21 radio your intention that you're going to stop someone?

22 A You could, yes.

23 Q Well, you could or you should?

24 A Probably should.

25 Q Okay. Should you try to coordinate the stop

1 with other officers?

2 A If there's other officers available, yes.

3 Q Okay. Should you position your cruiser at
4 least 20 to 25 feet away from the other vehicle?

5 A Again, that just totally depends on the stop,
6 the area, the location.

7 Q Okay. If it allows for it.

8 A Well, again, I don't want to get too technical
9 with you.

10 20 feet doesn't give you much reaction time
11 and we try to show that to officers in our training.
12 More like 25 or 30 feet, if you're going to stay back.

13 Q Okay.

14 A With a 25 or 30-foot left or right offset.

15 Or you go a 3-foot left or right offset so
16 that if they put it in reverse, it's probably enough --
17 not enough kinetic energy to deploy your airbag and, you
18 know, to take your cruiser out of the situation. So
19 there are so many variables we're looking at.

20 Q Okay. So you basically tell them to stay 25
21 to 30 feet behind the vehicle, so if they put it in
22 reverse, there's not enough kinetic energy for them --

23 A No. That the would be the 3-foot left or
24 right offset.

25 Q Thank you, I just wanted to make sure I was

1 right.

2 A That's a 3-foot.

3 Q All right. You don't approach the suspect or
4 the suspect vehicle.

5 A It depends on the situation.

6 Q Okay. Wait for back-up prior to making
7 contact with the suspect.

8 A If the person is cooperating, allows you to do
9 that, yes.

10 Q Stay behind the wall.

11 A If there's a wall.

12 Q Okay. Well, your cruiser can be the wall.

13 Correct?

14 A I don't usually refer to it as that, no,
15 but --

16 Q Okay. Well, is it best not to stay behind
17 your cruiser for a felony stop?

18 A It depends on the situation.

19 Q Okay. Well, you keep on saying it depends on
20 the situation.

21 You train officers. Correct?

22 A As I outlined, sir, in classic felony stops,
23 you can't -- you can't go back and forth in between
24 these things. You can't -- you're talking about
25 something classic on paper that you can set up and you

1 can put together.

2 Q Sure.

3 A Or you're looking at a situation where you
4 pull in, and we've got from -- it seems like the radio
5 traffic, we've got about six seconds from when we first
6 see a vehicle until the vehicle's coming at an
7 individual. And you want -- you're expecting them to
8 stop the vehicle, call in, wait for back-up, get behind
9 the cruiser, you are just so unrealistic in what you're
10 trying to allege in here.

11 Q I'm not alleging anything, I'm just asking you
12 simple questions with regard to the training for a
13 high-risk felony stop. Are these the proper protocol
14 that you do in that training?

15 A And that's why I said, if the tactics will
16 allow it, yes, it is.

17 Q Okay. That's all I'm asking for.

18 All right. So you stay behind cover and
19 things of that nature. Is that correct?

20 A If they'll allow it, yes, sir.

21 Q Okay. And that is what you do for a
22 reasonable stop if it allows for it. I'll give you that
23 caveat. Correct?

24 A And if things may change.

25 Q Okay. Would you agree that the use of deadly

1 force to prevent the escape of all felony suspects,
2 whatever the circumstances, is constitutionally
3 unreasonable?

4 A No, sir.

5 Q You don't agree with that.

6 A No.

7 Q Okay. You agree that where the suspect poses
8 no immediate threat to the officer and no threat to
9 others, the harm resulting from failing to apprehend him
10 does not justify the use of deadly force to that extent?

11 A That's correct. That's one of the sections.

12 Q Okay. Do you agree that an officer's evil
13 intentions will not make a Fourth Amendment violation
14 out of an objectively reasonable use of force, nor will
15 an officer's good intentions make an objectively
16 unreasonable use of force constitutional?

17 A Yes, sir.

18 Q Okay. Would you agree that coercive actions
19 taken by officers that deprive any person of liberty or
20 cause some type of duress more than necessary is
21 unreasonable, and by default, excessive?

22 A I'm not crazy about the way you worded that.

23 Q You want me to reread it?

24 A Well, the word I'm having a problem with is
25 necessary. I would rather, you know, more than

1 reasonable.

2 Because you can only -- the courts have never
3 said we have to be perfect or even correct, we just have
4 to be reasonable.

5 The only way you can find out if it was
6 necessary or not is actually after the fact.

7 And so that's -- I guess that's the one word I
8 had a problem with in your statement.

9 Q Okay. So let me reread it to make sure we're
10 on the same page here.

11 Coercive actions taken by officers that
12 deprive any person of liberty or cause some type of
13 duress more than necessary is unreasonable, and by
14 default, excessive.

15 You don't agree with that because of the word
16 necessary. Is that correct?

17 A Yeah. More than necessary.

18 I believe -- well, that seems restrictive. It
19 seems to fall into that second-guess, you know, aspect
20 of it.

21 Q Okay. What about: An individual must possess
22 a weapon and show signs that he is willing to use it.
23 The mere possession of a weapon with no perceived intent
24 to cause injury will not meet the standard for the use
25 of deadly force?

1 A Yes, sir.

2 Q You agree with that statement?

3 A Yes, sir.

4 Q Do you agree with: Reasonableness depends on
5 not only when the seizure was made but also on how it
6 was made?

7 A Yes, sir.

8 Q Okay. It is not constitutionally reasonable
9 to use deadly force to prevent the escape of a felon who
10 is unarmed and possesses no threat to others.

11 A Yes, sir.

12 Q And when you say, yes, sir, meaning you agree
13 with that statement?

14 A Yes, sir.

15 Q Okay. The statement: An officer's good
16 intentions will not make -- I'm sorry, let me rephrase
17 that.

18 An officer's good intentions will not make an
19 objectively unreasonable use of force constitutional.

20 A Correct.

21 Q Okay. An officer must act as other reasonable
22 officers would have acted in a like or similar
23 situation.

24 A Yes, sir.

25 Q Officers should attempt to cause the least

1 amount of injury or trauma to the subject while still
2 limiting the exposure of risk to themselves.

3 A Yes, sir.

4 Q Do you agree with that?

5 A Well, yeah, it's -- I'm just -- I agree with
6 it. It doesn't always work out that way, it's hard to
7 do.

8 Q Okay. You agree that it's possible that an
9 officer may have misjudged the situation, the speed of
10 the incident, the stress level, fear, injury,
11 exhaustion, et cetera, may have forced an error in
12 judgment. This will certainly increase civil liability,
13 but that is the civil process in all -- that is what the
14 civil process is all about, to right unintentional
15 wrongs. A major problem is when an officer realizes a
16 mistake after the fact and is reluctant to admit it.

17 A Yes, sir.

18 Q You agree with that statement?

19 A Yes, sir.

20 Q Okay. In part of the material that you
21 reviewed, you reviewed Deputy Forsyth's psychological
22 profile. Is that correct?

23 A If I did, I -- if it was part of his hiring
24 packet, I did. I can't say I paid much attention to it.

25 Q So you don't recall it stating in his profile

1 that he was prone to deny even relatively minor faults
2 or foibles?

3 A No.

4 Q Okay. You don't recall seeing that in
5 addressing issues of management, aggressive feelings or
6 thoughts, particularly in situations where a law
7 enforcement officer is likely to be placed in dealing
8 with highly confrontational individuals, he is prone to
9 hypervigilance?

10 A I -- I don't recall it.

11 Q Okay. So that didn't play a part in making
12 any of your opinions in this case.

13 A No, sir. I wouldn't -- I wouldn't try to
14 second-guess a psychological.

15 Q Okay. You did review the Marion County
16 Sheriff's Department use of force policy. Is that
17 correct?

18 A I did, sir.

19 Q Okay. And you believe that the Marion County
20 use of force policy is a reasonable --

21 A Yes, sir.

22 Q -- policy. Is that correct?

23 A Yes, sir. It is actually pretty standard.

24 Q Okay. And it's reasonable to apply that use
25 of force policy to the facts and circumstances of this

1 case.

2 A Yes, sir.

3 Q Okay. The use of force policy of Marion
4 County defines several terms, one of which is
5 reasonable, defined as those actions that a prudent
6 person would believe are fair and sensible given the
7 totality of the circumstances.

8 A Yes, sir.

9 Q Proper?

10 A Yes, sir.

11 Q Okay. Imminent threat defined as that threat
12 which is about to happen, immediate, and perceived to be
13 unavoidable.

14 A Yes, sir.

15 Q Proper?

16 A Yes, sir.

17 Q Okay. So if a threat can be avoided, it's no
18 longer an imminent threat. Is that correct?

19 A We have to qualify that. Because if we're
20 dealing with possible -- is it possible it could be
21 avoided? Again, that goes back to the difference
22 between what is possible and what is reasonable.

23 Q I understand that.

24 And the definition which you agree was
25 reasonable, that a threat that is about to happen,

1 immediate and perceived to be unavoidable --

2 A Yes, sir.

3 Q -- you said that was proper.

4 A It is.

5 Q And my question was, if a threat can be
6 avoided, then it's not an immediate threat. So if you
7 can avoid the threat, it's not an immediate threat.
8 Correct?

9 MR. UMINA: Imminent Bryan.

10 BY MR. EDWARDS:

11 Q Imminent threat. I'm sorry, I'm saying it
12 wrong. Imminent threat.

13 A It's hard, as I just said in my answer before,
14 one and two are not -- the first statement you read and
15 the second statement you read aren't totally consistent
16 with each other.

17 Q Okay. And how are they inconsistent?

18 A Because the term is reasonable. All right?
19 In other words, if -- I'll keep it in context of what
20 we're dealing with.

21 If I have a car coming at me and after the
22 fact, well, it's possible you could have, you could have
23 done this or done that which may then have -- we
24 don't -- it's not looked at that way.

25 Is it reasonable from the perception of that

1 officer at that time that he was going to be hit by that
2 car, not is it possible that if you would have done X, Y
3 or Z, you may not have.

4 Q You made a statement there and I want to make
5 sure that I heard that correctly. You said if it's
6 reasonable from what that officer thought. Is that what
7 you believe to be the standard?

8 A From the perception of an officer in a tense,
9 rapidly evolving situation.

10 Q But of a particular officer or just a
11 reasonable officer?

12 A A reasonable officer. And then it's a jury's
13 task to decide, was that officer's perception in that
14 situation reasonable.

15 Q Okay. So, again, you may have answered but I
16 don't think you have so I'm going to ask the question
17 again.

18 Imminent threat is defined as that threat
19 which is about to happen, immediate and perceived to be
20 unavoidable. My question to you was: If a threat can
21 be avoided, it is not imminent. Is that correct?

22 MS. DURST: I think he --

23 MR. EDWARDS: I'm sorry, I did it again. I
24 think I did it again.

25 MS. DURST: Well, I'm going to object to the

1 form, and I think he's answered it.

2 THE WITNESS: I believe I've -- I've answered
3 that I believe the best I can.

4 BY MR. EDWARDS:

5 Q Well, would you agree that if a threat can be
6 avoided, it's certainly not imminent?

7 A No, sir.

8 Let me try to explain it another way. You
9 point a firearm at me, I move and I use my firearm
10 against you. After the fact, it's found out that your
11 firearm was empty. Well, it could have been avoided
12 because it was an empty firearm. I had no way of
13 knowing that at the time.

14 That's why when you're using the term that
15 you're using, I have a problem with it, unless you put
16 in what our standard is, reasonably perceived.

17 That's why the first statement you did, I
18 agree with that completely, a reasonable perception,
19 that's what we are.

20 But the fact that it could have been avoided
21 where after the fact, you prove this or prove that of
22 things I couldn't have known -- the officer couldn't
23 have known at that time, I disagree with that.

24 Q Okay. And I think I may have misworded my
25 question. Let me word it like this.

1 If a threat has been avoided, it's certainly
2 not an imminent threat.

3 A Oh, I disagree with that, too.

4 If I was lucky enough to jump out of the way
5 when you were shooting at me and I didn't get hit, it
6 doesn't mean that wasn't an imminent threat. Does that
7 make sense to you?

8 Q I understand the shooting aspect. But if I'm
9 standing -- if a car passes me by, I'm no longer in
10 imminent threat of that car.

11 A Not at that point.

12 But we still have to worry, what if the car --
13 and I've had this in other cases -- backs up again,
14 tries to hit the officer.

15 Q Hold on. But that's a whole different issue.
16 I'm talking about the immediate threat. If a car passes
17 me by, that immediate threat has passed. If he backs
18 up, that's a whole different situation. Correct?

19 A Yes.

20 Q Okay.

21 A That immediate threat to the officer.

22 But by Tennessee versus Garner, if that -- I
23 have an individual at a county fair and he decides he
24 wants to kill everybody, he drives up on the sidewalk
25 and runs over a bunch of people, he comes in my

1 direction, I dive out of the way, well, no imminent
2 threat to me, but how about all these other people on
3 the sidewalk?

4 Q I understand that, sir. That's not the
5 question I asked. You're adding additional facts.

6 My question is: If a single threat has been
7 avoided, it's certainly no longer an imminent. Correct?

8 A To that officer.

9 Q To that officer.

10 A It doesn't mean it's not an imminent threat to
11 other people.

12 Q Okay. Fair enough. That goes to the fact and
13 circumstances.

14 But if it's still an ongoing threat, then it
15 would be an imminent threat to someone else. Correct?
16 It has to be an imminent threat to someone else.

17 A Yes, sir.

18 Q Okay. So, again, if a threat has been
19 avoided, it's certainly no longer imminent. Correct?

20 MS. DURST: And I'm going to object to the
21 form. Avoided by whom?

22 BY MR. EDWARDS:

23 Q By the person that it was directed to. As it
24 relates to that person, it's no longer imminent.

25 A Yes, sir. To that person.

1 Q Okay.

2 A I'll agree with that.

3 Q All right.

4 A With, again, the caveat that you have to
5 give -- give adequate reaction time.

6 In other words, well, the bumper was two feet
7 past. If the vehicle is traveling at 10 miles per hour,
8 it's going 14.67 feet per second, it takes time -- both
9 Mr. Root and I have taken the first science instructors
10 course. It takes time to do everything. It takes time
11 to start the shoot, it takes time to stop the shoot.

12 That's why, again, we go into the
13 reasonableness of it. Because it is very possible that
14 if a vehicle is coming at me and I start pulling the
15 trigger, it is physically and humanly possible to stop
16 shooting, in the amount of time that vehicle could then
17 drive 14.67 feet, so technically it's past me, but
18 that's why the term is reasonable.

19 Q Okay. I understand.

20 Okay. Are you familiar with what a staggered
21 roadblock is?

22 A Yes, sir.

23 Q Okay. Can you just tell me what that is?

24 A If you're going to do a roadblock, you have to
25 allow an escape route. So that's why -- in other words,

1 you can't -- you're told -- trained not to completely
2 block off the road. So you'll either stack here where
3 they can go either left or right or you'll stagger it so
4 there is an escape route if the person is -- decides
5 that they're willing to either take their life or take
6 the life of anybody around the cars.

7 Q So the purpose of a staggered roadblock, my
8 understanding, is to slow the car down, not necessarily
9 to stop it.

10 A Yes, sir.

11 Q Okay.

12 A Encourage him to stop.

13 Q Sure.

14 And as I think you already indicated, there
15 are points or openings in a staggered roadblock that
16 allow for a vehicle to pass through slowing down.

17 A Escape routes, yes, sir.

18 Q Okay. And if there is a point in the
19 staggered roadblock, if the point of the staggered
20 roadblock is basically to slow a vehicle down, allow it
21 to pass through, it wouldn't be reasonable for an
22 officer to stand in that opening where the car is to go
23 through, would it?

24 A Right. No.

25 Q Is that correct, it would not be reasonable?

1 A That would certainly be against your training.

2 Q Okay. All right. Now, with the -- and we've
3 gone through some of this already. The use of force,
4 lethal force use under the use of force policy of the
5 Marion County Sheriff's Department, you're familiar with
6 that. Is that correct?

7 A Yes, sir.

8 Q Okay. And it states that deputies of the
9 Marion County Sheriff's Department are permitted to use
10 lethal force when the deputy reasonably believes that
11 it's necessary to, A, protect themselves or others from
12 what they believe to be an imminent threat of serious
13 bodily injury or death to include, but not limited to,
14 one, attempts to render the deputy unconscious; two,
15 grabbing the deputy's firearm; three, blows or attempted
16 blows to the deputy's vital organs or head; four,
17 stabbing, shooting or any other action which would
18 create a likelihood of causing the deputy or other
19 serious injury or death.

20 B, to prevent the escape of a suspect or
21 prisoner whose freedom is reasonably believed to
22 represent an imminent threat of serious bodily injury or
23 death to the deputy or other law enforcement officers or
24 others.

25 So did I read that correctly as to what your

1 understanding of that is?

2 A Yes, sir.

3 Q Okay. Would you agree that if an individual
4 is fleeing the police and has already passed the police
5 by, the police can no longer consider themselves to be
6 in imminent threat of serious bodily injury?

7 A The police officer can't based on the
8 explanation I just gave you previously.

9 Q Okay. Cannot. The police officer cannot.

10 A Cannot.

11 Q Okay.

12 A Right. For him or herself.

13 Q All right. And if I ask a follow-up
14 question this time, maybe it'll help this out a little
15 bit.

16 And likewise, if there are no members of the
17 public in the immediate area, then under the definition
18 of imminent threat, there would be no justification for
19 use of deadly force. Is that correct?

20 A How are you defining immediate?

21 Q Well, immediate means there.

22 MR. UMINA: Imminent is the term.

23 MS. DURST: No, he said immediate area.

24 MR. EDWARDS: I said immediate area.

25 MR. UMINA: Got you.

1 BY MR. EDWARDS:

2 Q So immediate area meaning there within
3 where -- I guess within the sight of the police
4 officers.

5 A I -- I don't know how to answer that. That
6 would have to be -- it depends on what happened before,
7 it depends on the area we're in and, you know --

8 Q I'm sorry, so tell me why. Why can't you
9 answer the question?

10 A You limit it, you said in the sight of the
11 officer.

12 If it happened on one block and I know there's
13 a parade on the next block over --

14 Q Well, let me go back and maybe help you out a
15 little bit.

16 The use of force policy defines imminent
17 threat, that threat which is about to happen, immediate
18 or perceived to be unavoidable.

19 My question was, if there are no members of
20 the public in the immediate area, then under the
21 definition of imminent threat, there would be no
22 justification to use deadly force.

23 A Unless it was, again, the perceived what? The
24 thing you read first. In imminent.

25 Q I'm not sure. I'm going back and forth here.

1 So let me go -- you agreed with this statement. You
2 would agree that if an individual is fleeing the police
3 and has already passed the police by, the police can no
4 longer consider themselves to be in imminent -- be in
5 imminent threat of serious bodily injury, and you agreed
6 with that statement.

7 A Yes.

8 Q Okay. And my follow-up was likewise, if there
9 are no members of the public in the immediate area, then
10 under the definition of imminent threat, there would be
11 no justification for use of deadly force.

12 A Okay. And what I'm asking you is read --
13 would you turn back the page and read imminent?

14 Q Yes. Imminent: That threat which is about to
15 happen, immediate, and perceived to be unavoidable.

16 A Okay. The perceived to be unavoidable.

17 Q Okay.

18 A We have to put that part in there.

19 In other words, exactly what I said, if I know
20 that the end of this road, I've got a busy thoroughfare,
21 and this person has already demonstrated total disregard
22 for themselves, disregard for the life of others, this
23 is where it makes it very hard for that officer to say,
24 I'm going to let him go ahead and get on this road, and
25 if he kills somebody, that's just a factor.

1 Q Do you agree that the use of force policy
2 strictly prohibits a deputy from discharging his firearm
3 solely to protect property interest?

4 A Yes, sir.

5 Q And just so we're fair, you have no problem
6 whatsoever with the defined terms of the use of force
7 policy. Is that correct? You believe those are proper.

8 A Yes, sir.

9 Q Okay.

10 A Pretty standard.

11 Q If Deputy Forsyth knew, on August 2nd, 2017,
12 that Philip Rhoades was just wanting to escape from the
13 gas well site, would it have been objectively
14 unreasonable for him to have stepped in front of the
15 Jeep and shoot him?

16 A I don't know how -- I don't know how to answer
17 that.

18 Q Okay.

19 A Because, again, we've got so many factors
20 involved in here.

21 Q Okay. Well, my question, just as I asked it
22 to you, that's the only factors I'm asking, if Deputy
23 Forsyth knew, on August 2nd, 2017, that Philip Rhoades
24 was just wanting to escape from the gas well site, it
25 would have been objectively unreasonable for him to step

1 in front of the Jeep and to shoot him. Is that correct?

2 A No. If all he knew was this person was trying
3 to escape and we didn't have all these other factors
4 we've talked about, then, yeah, he shouldn't have shot
5 him.

6 Q Okay. That would have been unreasonable, that
7 would have been objectively unreasonable. Correct?

8 A If we didn't have all these other factors we
9 talked about.

10 Q Okay. All right. In going through your
11 initial disclosure, the first thing that you bring up is
12 a July 9th, 2017 counterfeit incident.

13 A Yes, sir.

14 Q What relevance does that have to this case
15 whatsoever?

16 A I believe that was part of the first getting
17 the warrants for his arrest.

18 Q Okay. Did you review anything in the material
19 that indicated that Deputy Forsyth was even aware that
20 there was a warrant for a counterfeit?

21 A I don't know whether he knew that or not. I
22 believe he knew there were warrants but --

23 Q Okay. So you don't know whether he knew
24 anything about the counterfeit incident one way or the
25 other, the alleged counterfeit incident, one way or the

1 other.

2 A No. And it wouldn't surprise me because, I
3 mean, as an officer, all any -- they don't even tell
4 you. Dispatch will say there's a warrant on this
5 individual or there are warrants out. They're not going
6 to tell you what type of warrant.

7 Q Okay. When you go down to the July 25th
8 series of incidents, as you -- I think that's how you
9 put it, series of incidents.

10 A Yes, sir.

11 Q You stated that the deputies received
12 information that Mr. Rhoades and Amanda Powell had
13 broken into the residence, cut the lock off the water
14 utility, were living in the residence without the
15 owner's permission. That's a quote from your report.

16 In your review of the material, do you know
17 who filed that report with the police?

18 A I don't.

19 Q Okay. You don't know that it was actually a
20 family member who owned the house, and when I say family
21 member, someone who's related to Mr. Rhoades, and
22 indicated that he didn't want to get him into any type
23 of trouble or anything like that?

24 A No, I --

25 Q Okay. You don't recall seeing that in your

1 review?

2 A I think when I read the -- I don't think it
3 was in relation to that, but when I read the family
4 depositions, I think there was something about that in
5 there.

6 Q Okay.

7 A Again, that's something, as an officer, I
8 wouldn't know until I was -- if I'm dispatched to a
9 call, I'm gonna go.

10 Q Okay. You didn't mention in your series of
11 events that it was Deputy Love, that Deputy Love shot at
12 Philip Rhoades when Philip Rhoades passed him by in the
13 truck. Why not?

14 A I don't know. I thought I did. To me, I
15 mean, I don't think there's any question about that.

16 Q Okay. But you didn't mention it at all in
17 your disclosure. Were you aware of that when you made
18 that disclosure?

19 A Oh, sure.

20 Q Okay.

21 A Sure. I mean, there's nobody saying that
22 didn't happen.

23 Q Okay. But when were you made aware that it
24 was actually Deputy Love who shot at Philip Rhoades on
25 July 25th?

1 A I'm sorry, what was that?

2 Q In the July 25th, 2017 series of incidents,
3 you don't mention that Deputy Love shot at Philip
4 Rhoades.

5 A Oh, at. Okay. Okay. At.

6 Q Yeah. That's not mentioned in your report.
7 And my question is, why not?

8 A I knew that right from the beginning. I mean,
9 to me, that was something that just -- who he shot at or
10 who shot at him, I didn't really care. I didn't think
11 that had anything to do with -- other than the fact that
12 a law enforcement officer had shot, been put in this
13 situation, I don't really care who it was.

14 Q All right. So I just want to make sure I
15 understand. It's your testimony that the fact a Marion
16 County Sheriff's deputy had shot at Philip Rhoades a
17 week before they shot and killed Philip Rhoades was not
18 relevant.

19 A No, sir. No. The person who did it wasn't
20 relevant.

21 Now, maybe if it had been that same person who
22 was involved the second time but, I mean, even that,
23 it's --

24 Q Okay.

25 A I don't know what that has to do with what

1 happened.

2 Q You indicate in the report on the July 25th,
3 2017 series of incidents that Mr. Rhoades -- let's see.

4 Well, let me ask you the question. Do you
5 ever see any statements from any of the pedestrians on
6 the rail trail that said that Philip Rhoades passed them
7 without regards to their presence or safety?

8 A I didn't see that in statements. I saw the
9 video of the pursuit.

10 Q Okay. Is it your testimony that a video
11 pursuit shows something of Mr. Rhoades on a rail trail?

12 A It didn't, but it certainly showed horrendous
13 driving.

14 Q Okay. With regard to the August 2nd, 2017
15 incident, you indicate that the information you rely on
16 in your report is taken from the statements of Deputy
17 Forsyth and Love. Is that correct?

18 A Yes, sir.

19 Q Okay. Do you believe that you would change
20 any of the information or your opinions after reviewing
21 Deputy Forsyth's and Love's deposition testimony?

22 A No, sir.

23 Q Okay. You indicate that the drug screen was
24 performed by the Offices of the Medical Examiner. Is
25 that correct?

1 A I'm sorry?

2 Q In your report, you indicated that a drug
3 screen was performed on Philip Rhoades's body.

4 A Yes, sir.

5 Q Okay.

6 A Yes, sir.

7 Q You're not a toxicologist. Is that correct?

8 A No, I'm not.

9 Q Okay. You're not qualified to give an opinion
10 regarding any substance allegedly in Philip Rhoades's
11 system. Is that correct?

12 A Correct.

13 Q Okay. And you have no evidence if either
14 Deputy Forsyth or Deputy Love were even aware that
15 Philip Rhoades may have been under the influence of any
16 substance on August 2nd, 2017.

17 A Oh, they couldn't have known.

18 Q Okay. In your statement of opinions, you
19 indicated, one, Deputy Forsyth did his duty and placed
20 himself in harm's way when he responded to a high-risk
21 pursuit of a dangerous fleeing felon.

22 A Yes, sir.

23 Q That's your opinion.

24 Okay. You acknowledge, on page eight of that
25 opinion, that it was the pursuit of Philip Rhoades that

1 created the risk. Is that correct?

2 You answered this question before, and maybe
3 it's the wording of it. You indicated, when we first
4 started, that the alleged incidents that -- the alleged
5 harmful conduct of Philip Rhoades were a result of him
6 being chased by police. Is that correct?

7 A The alleged harmful conduct was due to
8 Mr. Rhoades felony fleeing from police officers that
9 were lawfully trying to stop him.

10 Q Okay. I understand. But that was my
11 question, now I'll follow-up.

12 We don't have any -- you all don't have any
13 evidence or have reviewed any material that alleges that
14 Philip Rhoades acted violently or dangerously at any
15 other time other than when he was being chased by
16 police. Is that fair?

17 A That would be both in vehicles and on foot?

18 Q Yes.

19 A Okay. Yes.

20 Q Okay.

21 A It was all during the course of trying to
22 apprehend him.

23 Q Okay. And you also agree that the alleged
24 dangerous actions attributed to Philip Rhoades was his
25 driving while attempting to escape. Correct?

1 A Yes, sir.

2 Q Okay. Page seven and eight, you state:

3 Deputy Love had to jump out of the path of the truck
4 driven -- I'm sorry, seven and eight of your disclosure.
5 Detective Love had to jump out of the path of the truck
6 driven by Mr. Rhoades. Mr. Rhoades's truck narrowly
7 missed Deputy Love. Is that your statement?

8 A Yes, sir.

9 Q Okay. How do you know how close the truck
10 came to Corey Love?

11 A Just from his statements.

12 Q Okay. And that's his statements -- what
13 statements? Because we're going back to one through 24.
14 What statements did he give that indicate how close the
15 truck was to him on July 25th, 2017?

16 A I don't believe he said it was one foot, two
17 foot. I don't think there was any distances taken.

18 Q Okay. You would agree that shooting a moving
19 target with a pistol is pretty difficult.

20 A It could be, yes.

21 Q Okay. Are you aware that on this July 25th,
22 2017 incident, Corey Love testified that he was able to
23 get out of the way of the truck being driven by Philip
24 Rhoades, pull out his pistol, aim and then shoot and hit
25 the rear tire of the truck as it passed by him?

1 A Yes, sir.

2 Q Okay. If Corey Love was out of the path of
3 the truck and had time to pull his weapon, aim and fire
4 it and hit the rear tire, he was no longer in imminent
5 danger, was he?

6 A Probably not.

7 Q Okay. Was there any evidence, from what you
8 reviewed or what anyone told you, that there was anyone
9 in Philip Rhoades's path in front of him at the time
10 Corey Love shot his tires and passed by him on
11 July 25th, 2017?

12 A No.

13 Q And you believe, of course, if there was
14 someone in front of him, that would have been
15 documented?

16 A Well, I believe the outcome would have been
17 very different then.

18 Q Okay. Your statement was: Deputy Forsyth and
19 Love knew that Mr. Rhoades had fled from the police with
20 reckless disregard. Mr. Rhoades had multiple felony
21 warrants for his arrest -- for his arrest including
22 murder of a police officer.

23 I think you had a typo but I wanted to type it
24 as your quote, as it states.

25 Is the fact that Forsyth knew who he was

1 chasing on August 2nd, 2017 important?

2 A No.

3 Q Okay. Why not?

4 A He still had a report of a potential stolen
5 vehicle.

6 Q Okay.

7 A And so then when he sees the vehicle, and as
8 soon as that vehicle then swerves into -- and puts
9 oncoming traffic at risk, I mean, that's a whole 'nother
10 chain of events in there.

11 So at that point, ultimately who was the
12 driver didn't matter. And at that point, when the
13 vehicle came at Deputy Forsyth, who the driver was
14 didn't really matter.

15 Q Okay. If Forsyth didn't know who was in the
16 Jeep, so that wouldn't have changed your opinions in
17 that matter at all?

18 A No.

19 Q Okay. You state in your opinion that
20 according to sources, he, meaning Philip Rhoades, stated
21 he was not going back to jail.

22 A (Nodding head.)

23 Q In the material that you reviewed, did you
24 identify the source of that alleged quote?

25 A I didn't. The only thing I did see was in a

1 Facebook post that he made, he had a gun to his head,
2 and I don't know.

3 Q Okay. Can you say, with any degree of
4 certainty, if that quote was ever made by Philip
5 Rhoades?

6 A I don't know and it --

7 Q Okay.

8 A I didn't --

9 Q I'm sorry, go ahead.

10 A I didn't try to say in here anything about
11 police-assisted suicide or something like that. Those
12 factors I don't believe were known to Deputy Forsyth at
13 the time so I didn't take that path.

14 Q You're doing a great job, you're already
15 answering my next question before I ask it.

16 To your knowledge, you don't know whether
17 Forsyth or Love were even aware of that quote.

18 A Don't know.

19 Q Okay. You stated Mr. Rhoades made it
20 impossible to conduct a felony traffic stop. He had not
21 voluntarily stopped his vehicle.

22 A Correct.

23 Q Okay. If that statement is true, then wasn't
24 it against all police training and procedure for Forsyth
25 to jump out of his cruiser and place himself in front of

1 a moving car?

2 A I don't think he placed himself in front of a
3 moving car, sir.

4 Q Okay.

5 A He got out of his vehicle. He said his
6 intention was to go to the back of the vehicle.

7 But if you look at the timeframe, which I
8 believe is like six seconds from his last transmission
9 until shots fired, you've got to give a human being time
10 to do something.

11 Q Okay.

12 A He didn't even get his cruiser stopped.

13 Q Can you tell me -- can you cite for me where
14 it states that Forsyth, in jumping out of -- I'm sorry.

15 Can you cite to me where it states that what
16 Forsyth did in jumping out of his cruiser when a
17 suspect's vehicle had not stopped is proper?

18 A I don't believe it was intentional.

19 Q What do you mean, you don't believe it was
20 intentional?

21 A I believe he tried to put it in park while
22 he's starting to get out of the vehicle. I don't
23 believe he intentionally kept the vehicle rolling.

24 Q No, I understand that, and my question is:
25 Why was it proper for him to jump out of his cruiser

1 when the suspect's vehicle hadn't stopped is proper?

2 A Oh. You don't know what this vehicle's going
3 to do.

4 He says when he pulled in, the vehicle came
5 toward him. He thought he was going to hit him.

6 Then the vehicle backed up, that's when he got
7 out of the cruiser.

8 So, I mean, I can't fault him at all for doing
9 that. I think the last thing you want to do is stay
10 inside that vehicle at that point. What are you going
11 to do from there?

12 Q Okay. So my question to you is that can you
13 cite to me what material you rely on in making that
14 statement, that it was proper for him to jump out of his
15 vehicle, meaning Forsyth to jump out of his cruiser,
16 when the suspect's vehicle hadn't come to a stop?

17 A I just think common sense.

18 Q Okay. You think that's common sense.

19 A Yes.

20 Q Okay. Opinion number two: Deputy Forsyth's
21 response to Mr. Rhoades placing members of the general
22 public at risk of death or serious bodily harm, and
23 after attempting to run over the deputy, complied with
24 Supreme Court guidelines and National Law Enforcement
25 operational practices.

1 A Yes, sir.

2 Q That's your opinion.

3 What members of the general public were
4 present and at imminent risk of death or serious bodily
5 harm on August 2nd, 2017 when Deputy Forsyth shot and
6 killed Philip Rhoades?

7 A Anybody in the roads that he -- when he almost
8 hit a vehicle before going up the gas well and anybody
9 that would have been on the roads if he had successfully
10 got back to the roadway.

11 Q So it's your testimony that the general
12 public, that was to be considered -- they would be
13 considered present and at imminent risk of death and
14 serious bodily harm at the time Deputy Forsyth shot and
15 killed Philip Rhoades.

16 A I don't believe that's why he -- Deputy
17 Forsyth shot, but that's still a factor that needed to
18 be at least considered.

19 Q What specific Supreme Court guidelines was
20 Forsyth complying with when he stood in front of the
21 Jeep on August 2nd, 2017 and shot and killed Philip
22 Rhoades?

23 A Again, sir, I don't believe he stood in front
24 of the Jeep.

25 Q So it's your testimony you don't believe he

1 stood in front of the Jeep?

2 A I believe the Jeep drove at him.

3 Q What exactly had to have been occurring in
4 order for the Supreme Court guidelines, for an
5 objectively reasonable shooting to have occurred on
6 August 2nd, 2017?

7 A I outline them in the paper in terms of
8 Tennessee versus Garner.

9 Q Okay. Tell me today.

10 A It was the danger to the officer or others.
11 It says it's not reasonable to shoot an unarmed, fleeing
12 felon who poses no danger to others.

13 And after that case, law enforcement training
14 around the United States changed.

15 When I first got into law enforcement, if
16 somebody ran from you, you were allowed to shoot.

17 So that changed training. And so we have to
18 look, was he fleeing at the time, and at the time, he
19 wasn't fleeing. He was driving at an officer.

20 And so those are the factors that would be
21 present at that time.

22 Q Is that all?

23 A I mean, how much do you need?

24 Q Well, I just want to make sure that your
25 answer is complete.

1 A I believe that's why he shot, because his life
2 was in imminent danger.

3 Q Okay. What National Law Enforcement
4 operational practices was Deputy Forsyth complying with
5 when he jumped out of his cruiser on August 2nd, 2017
6 and placed himself in front of the Jeep that was
7 allegedly moving towards him?

8 A I do not -- again, you keep on saying it and I
9 will keep on saying, I do not believe he placed himself
10 in front.

11 The Jeep was backing up when he got out of his
12 vehicle, then the Jeep drove toward him. And anything
13 else is maybe something you want to -- a fact pattern
14 you want to put forward as a hypothetical. No one says
15 that.

16 Q Okay. So let me back up. Fair enough.
17 Hypothetically, if he placed himself in front
18 of the Jeep, would that have been proper?

19 A It would have been -- it would have been
20 tactically unsound to do that.

21 Q At the time the shooting took place,
22 Mr. Rhoades was not fleeing but was actively engaged in
23 committing felonious assault against Deputy Forsyth.
24 That's a quote from your disclosure.

25 A Yes, sir.

1 Q And this is a pretty important statement by
2 you because if Forsyth knew that Philip Rhoades was
3 simply trying to escape on August 2nd, 2017, he wouldn't
4 have been justified in shooting him, would he?

5 A We've been through that but we'll go through
6 it again.

7 If it's just escape, without all the other
8 factors we talked about, it would have been incorrect to
9 shoot.

10 Q Okay. And you agree that Deputy Forsyth had
11 time to draw his weapon and fire seven times and begin a
12 tactical reloading his weapon, if he knew that Philip
13 Rhoades was simply wanting to flee, he should have been
14 able to get out of the way. Correct?

15 A I don't know how -- I don't know how to answer
16 that.

17 Q Okay. Well, my question is, you know that he
18 drew his weapon, fired seven times and started a
19 tactical reloading. Is that correct?

20 A He did that after the Jeep stopped. He
21 started a tactical reload after the threat had passed.
22 He said he stopped firing, then he thought about doing a
23 tactical reload but then realized -- then said he
24 probably shouldn't and did not, you know, put the
25 magazine back in the weapon.

1 Q Okay. But if he knew -- I'm sorry, go ahead.

2 A So I don't even understand what you're asking
3 there.

4 Q Well, my question is, if he had time to shoot
5 and to reload his weapon, wouldn't he have time to get
6 out of the way if he knew that Philip Rhoades was just
7 trying to escape?

8 MS. DURST: Object to the form.

9 THE WITNESS: Are you saying that the vehicle
10 is not driving at Deputy Forsyth? If it's just trying
11 to escape over there, he shouldn't have shot.

12 But I don't even know what you're asking.

13 BY MR. EDWARDS:

14 Q Well, my question is, if he knows he's just
15 trying to escape, he shouldn't have shot him. Is that
16 correct?

17 A If you try to escape by running over me, I'm
18 going to shoot.

19 Q Sure.

20 A If there is trying to escape and trying to run
21 over Deputy Forsyth as part of that escape, it was
22 completely reasonable for him to shoot to save his life.

23 Q Okay. You indicate it's impossible to get in
24 Mr. Rhoades's mind to ascertain what his true intentions
25 were toward Deputy Forsyth.

1 In Deputy Forsyth and Deputy Love's
2 statements, there was no question that they perceived
3 Mr. Rhoades's action posed a threat of serious physical
4 harm or death to Deputy Forsyth. Both deputies perceive
5 that Mr. Forsyth (sic) was using his weapon -- his
6 vehicle as a weapon aimed at Deputy Forsyth. Is that
7 correct?

8 A Yes, sir.

9 Q Okay. And this goes towards your objectively
10 reasonable analysis. Correct?

11 A Yes, sir.

12 Q Okay. And I understand what you said before,
13 but if Deputy Forsyth knew that Philip Rhoades's
14 intentions were always just trying to escape, it would
15 have been improper for him to shoot him. Is that
16 correct?

17 MS. DURST: Object to the form.

18 THE WITNESS: No, sir.

19 We've been over that so many times and --

20 BY MR. EDWARDS:

21 Q Okay.

22 A I've answered that the best I can.

23 Q Okay. So you believe that Deputy Forsyth, it
24 would have been improper for him to step in front of the
25 Jeep to shoot if he knew he was just trying to escape.

1 Is that correct?

2 A You should not put yourself in front of a
3 moving vehicle, yeah.

4 Q Okay. And that would be objectively
5 unreasonable for him to have done that.

6 A It would be tactically, it's certainly
7 tactically unsound to do.

8 Q Okay. Well, why wouldn't it be objectively
9 unreasonable to do as well? If someone's in a car and
10 trying to escape and you step in front of them, you're
11 not allowed to step in front of them and shoot them, are
12 you?

13 A No.

14 Q Okay. That would be objectively unreasonable.

15 A Yes, if that's what he did, that would be
16 unreasonable.

17 Q Okay. You quote: The suspect posed a serious
18 threat of physical harm to others.

19 And again, at the time that Deputy Forsyth
20 shot and killed Philip Rhoades, what members of the
21 public were in imminent danger of sustaining serious
22 physical harm?

23 MS. DURST: Objection, asked and answered.

24 THE WITNESS: I --

25 MS. DURST: You can answer it again if you

1 can.

2 THE WITNESS: He shot because he was in
3 imminent danger of his own life. That's why he shot.

4 BY MR. EDWARDS:

5 Q Okay.

6 A The point I made and will continue to make, if
7 he would have made it to the roadway, anybody on the
8 roadway would have been at risk of serious bodily harm
9 or death.

10 Q If there were people there. Correct?

11 A Yes, sir.

12 Q Okay.

13 A And I think you've -- I've been on the road
14 and I believe you've been on the road, and it's
15 certainly a valid assumption to assume that there is
16 going to be a significant amount of traffic on that
17 roadway.

18 Q You cite research regarding a March 2017
19 Memphis police officer. It states that a subject does
20 not have a weapon but is trying to beat an officer to
21 death with their hands or feet, subject is trying to
22 take an officer's firearm away or subject is using a
23 weapon such as a knife, gun or club or other against the
24 officer. How are these facts and circumstances any way
25 related to this case?

1 A It's part of what I relate to as objective
2 reasonableness.

3 In other words, when -- I explained everything
4 in the paper. Being the lead trainer for the state and
5 training Kentucky and West Virginia and all these other
6 states, you've got to put things in context. Anything
7 done at the right time is right, anything done at the
8 wrong time is wrong.

9 And so that's when I started the national
10 research projects, because it's our job to protect and
11 serve the general public. And so I wanted to know what
12 I'm training my officers was objectively reasonable.

13 And that's been confirmed in every study I've
14 ever done. And it's done with the National Institute of
15 Justice, confirmed with their study, with a study in
16 conjunction with them. It's just, it's what I base
17 my -- the training I do on.

18 Q Okay. And in order for it to be related to
19 this -- these facts and circumstances, it's premised on
20 the prefix that Philip Rhoades was driving towards
21 Deputy Forsyth with the intent to harm him rather than
22 was trying to escape. Correct?

23 A Yes, sir.

24 Q Okay. Page 14 of your disclosure states:
25 Additionally, the deputies had reason to believe that

1 Philip Rhoades may be armed -- or might be armed.

2 Sorry.

3 You would agree that both deputies stated --
4 affirmatively stated that they never saw Philip Rhoades
5 with a weapon. Correct?

6 A Correct, sir.

7 Q Okay. Neither deputy made a statement that
8 either of their actions were based on the thought that
9 Philip Rhoades had a weapon. Is that correct?

10 A That's correct, sir.

11 Q Okay. And in fact, if either of the deputies
12 had believed that Philip Rhoades was armed, it would
13 have made their actions of jumping out of the cruiser
14 into the open even more unreasonable. Is that correct?

15 A No, sir.

16 Q You believe that if they knew he was armed or
17 thought he was armed, it was proper for them to jump out
18 of the car in front of -- or where he would have an open
19 view of them?

20 A Yes, sir. You do not want to try to get into
21 gun battle in the vehicle. The vehicle at that point is
22 considered a kill box.

23 Q Sure.

24 But at that point in time, Philip Rhoades,
25 according to both of the testimony, neither one of them

1 had stated Philip Rhoades attempted to get out of his
2 vehicle. Correct?

3 A Correct.

4 Q In fact, it was still moving, the vehicle. Is
5 that correct?

6 A Yes, sir. When he got out, that vehicle was
7 backing up.

8 Q So I want to ask you this. If I'm a police
9 officer going up to a scene where I believe that someone
10 has a weapon and that vehicle is still moving, do you
11 think it's proper for me to get out of my vehicle and
12 not take any cover, just to be out in the open in front
13 of that vehicle where I believe that vehicle -- that
14 other individual may be armed?

15 A Tactically, it's not sound. That's why Deputy
16 Forsyth said he got out of the vehicle and intended on
17 going to the back of the vehicle.

18 Q Okay.

19 A You've got to give him time to do it.

20 Q All right. You touched on this before
21 regarding the radio traffic by Deputy Forsyth. And you
22 indicated that at 9 point 08, radio traffic says: I got
23 up to -- this is Deputy Forsyth: I got up to the first
24 turn, I'm not sure if he cut off or continued up the
25 hill.

1 At 9:10, and this is nine minutes, ten
2 seconds: Looks like he cut off on a trail.

3 And at nine minutes, 16 seconds: Shots fired.

4 Is it your opinion that the actions of Deputy
5 Forsyth, from the time he decided to turn on the gas
6 well trail until he shot Philip Rhoades, took place in
7 six seconds?

8 A That's what it seems like.

9 Q Okay.

10 A From the radio traffic.

11 Q Okay. Do you have an opinion as to how Deputy
12 Forsyth's shooting Philip Rhoades caused the Jeep to
13 stop moving?

14 A I don't know. I mean, again, people are
15 debating this, and I don't think you can know.

16 It had to be, in a manual transmission, it had
17 to be out of gear.

18 Now, I don't know whether he was in the
19 process -- he hit the gear shift, I don't know. It
20 could have been he was shifting. It could have been he
21 was thinking -- he saw the weapon and he was doing what
22 he did before, he went and he drove to the vehicle and
23 then backed up, he could have been driving toward the
24 deputy and in the process of thinking about backing up,
25 I don't know. But it's just --

1 Q It would be speculation on your part.

2 A Sure. You wouldn't know how it got there.

3 But it couldn't be -- with a manual
4 transmission, it couldn't have been in gear and still
5 running.

6 Q Okay. You would agree with me that Deputy
7 Forsyth shooting Philip Rhoades didn't stop the vehicle.

8 A Correct.

9 Q Okay. You may have already stated this
10 before. You know how to determine how many feet a car
11 will travel per second at a given speed. Correct?

12 A Yes, sir.

13 Q Okay. My understanding is basically you
14 multiply the speed by 5,280 and divide it by 360.

15 A Right.

16 Q And that will give you the feet per second.

17 A Or you go on your computer, which I did, you
18 know, after I calculated it, I went on the computer in
19 the foot per second calculator and confirmed it.

20 Q With regard to your opinion number three,
21 Deputy Forsyth's firearm response was in compliance with
22 his training and department policy.

23 A Yes, sir.

24 Q Okay. What did you review, other than the
25 Marion County Sheriff's Department use of force policy,

1 regarding Deputy Forsyth's training prior to August 2nd,
2 2017?

3 A I didn't review the training, but I will
4 guarantee that West Virginia State Police Academy, like
5 all police -- because they did their firearms training
6 at our academy. They will be trained in Tennessee
7 versus Garner, they will be trained in Graham versus
8 Connor, they will. There's just no question about it.

9 Q You've already stated this but I want to make
10 sure you agree that the Marion County Sheriff's
11 Department use of force policy is a reasonable policy
12 and correct?

13 A Yes, sir. Yes, sir, it is.

14 Q Okay. And you would agree that if, if Deputy
15 Forsyth failed to act in accordance with the Marion
16 County Sheriff's Department use of force policy on
17 August 2nd, 2017, when he shot and killed Philip
18 Rhoades, you would opine that he acted objectively
19 unreasonable if he didn't follow that policy.

20 A I won't go that far, no.

21 Q Why not?

22 A Because I reviewed some policies, forgive me,
23 that are just absolutely stupid.

24 A shooting in Dayton, their policy says the
25 officer will exhaust all -- every available alternative

1 before resorting to use of deadly force. That is
2 stupid. Because you can't exhaust all available
3 alternatives.

4 I'm asked at that deposition, well, he could
5 have jumped in the car with the individual, couldn't he
6 have? He could have thrown his gun at him.

7 So, no, just because you're not in policy, it
8 doesn't mean your actions are objectively unreasonable.

9 Q All right. Well, you cited there but I've
10 already asked you, that you said that the Marion County
11 Sheriff's Department use of force policy is reasonable.

12 A Yes, sir.

13 Q And is correct.

14 A Yes, sir.

15 Q So my question was, if he failed to act in
16 accordance --

17 A With his policy.

18 Q -- with his policy when he shot and killed
19 Philip Rhoades, would you opine that he acted
20 objectively unreasonable?

21 A In this policy, yes.

22 Q Okay. Opinion number four: The Marion County
23 deputies' procedures after Mr. Rhoades was shot complied
24 with National Law Enforcement guidelines, training and
25 best practice.

1 A Yes, sir.

2 Q Okay. Basically Deputy Forsyth and/or Love
3 radioed EMS after shooting Philip Rhoades and you
4 believe they complied with the requirements. Is that
5 correct?

6 A Sir, you know more than that -- you know more
7 happened than that.

8 They immediately called shots fired, that they
9 needed an ambulance, that the deputies were okay.

10 Deputy Forsyth then ran back to his cruiser,
11 got his gloves, removed Mr. Rhoades from the car.
12 Deputy Love went back to get his gloves. They started
13 CPR and they continued CPR until other officers arrived
14 on the scene to take it over. That's what happened.

15 Q Okay. And I wasn't trying to -- but, I mean,
16 basically they were required to call EMS, they did that,
17 and they tried to take what actions they could at that
18 point in time. Correct?

19 A Yes, sir. Yes, sir. Yes.

20 Q What does that have to do with any basis of
21 the claims in this case? Does that have anything to do
22 with what the claims that were made?

23 A To me, it just shows that they did correct
24 follow-up procedures.

25 Q Okay. But the claims made in this case regard

1 with a shooting, not of what occurred after the
2 shooting. Is that a fair statement?

3 MS. DURST: I object to that, to the
4 characterization of the complaint.

5 BY MR. EDWARDS:

6 Q Okay. Your best practices, what's the best
7 practice? Is there something you can cite to me as
8 what's required or where you get that information of
9 what they're to do?

10 A Training throughout the United States and in
11 virtually every policy in the United States, if a
12 subject is injured, appears to be injured or alleges to
13 be injured, they should receive medical evaluation and,
14 if necessary, a medical treatment.

15 Q Okay. And actually, I think you already
16 testified before, as you sit here today, you don't know
17 what they may have been trained on or not because you
18 didn't review any of their actual training materials.
19 Is that correct? Other than the use of force policy.

20 A And they would have had first aid -- standard
21 first aid training and CPR as part of basic training, as
22 part of all basic training guidelines.

23 Q You believe them to, but as you sit here
24 today, you don't know that for certain. Is that
25 correct?

1 A I would be amazed if they didn't.

2 Q Okay. Opinion number five: The investigation
3 of this incident by the Marion County Sheriff's
4 Department followed National Law Enforcement guidelines
5 and best practices.

6 What investigation into the August 2nd, 2017
7 shooting of Philip Rhoades did the Marion County
8 Sheriff's Department perform?

9 A They did what they needed to. They arrived on
10 the scene, separated the individuals, we had firearms
11 that were taken into evidence, and then they were sent
12 to the hospital. That's what they should have done.

13 And at that point, the best thing to do is --
14 the best thing I believe they could have done is turned
15 it over to the state police.

16 In Ohio, immediately what they do is call
17 what's called BCI, or Bureau of Criminal Identification
18 and Investigation, they called BCI to get them out, or
19 the state police, Ohio State Highway Patrol, to turn it
20 over to them. I would always prefer them to do that.

21 Now, some departments do their own
22 investigation, I would prefer it turned over.

23 Q To your knowledge, Marion County, other than
24 what you indicated where they had the officers
25 separated, took their firearms and sent them to the

1 hospital, that was the extent of their investigation in
2 this.

3 A Yes. They turned it over, then they sent
4 their deputies for psychologicals. I mean, I think they
5 did it just like they should.

6 Q Okay. All right. Let's go to the
7 supplemental disclosure.

8 MS. DURST: Can we take a bathroom break?

9 MR. EDWARDS: Sure. Yeah.

10 (A recess was taken.)

11 BY MR. EDWARDS:

12 Q Mr. Faulkner, we took a break there, and right
13 before we took the break, I think we started on what I
14 was going to, your supplemental disclosure.

15 A Yes, sir.

16 Q All right. So on page two of your
17 supplemental disclosure, opinion number one, you state
18 that Corporal McDougal did not make inappropriate
19 statements to Rick Rhoades (phonetic).

20 All right. You would agree with me that as to
21 the credibility of a witness, that's solely for the jury
22 to determine.

23 A Yes, sir.

24 Q Okay. And you're not qualified to give expert
25 opinion as to the credibility of a witness. Is that

1 correct.

2 A Correct, sir.

3 Q Okay. And if Corporal McDougal had told Rick
4 Rhoades that Marion County deputies were going to take
5 down Philip Rhoades, that would be inappropriate. Is
6 that correct?

7 A It would have been, yes.

8 Q All right. Your supplemental opinion number
9 two states: The additional .40 caliber spent shell
10 casings located at the scene where Mr. Rhoades was shot
11 offer no additional information and do not in any way
12 alter the conclusions of the West Virginia State Police
13 investigation.

14 Okay. Now, the reason that the location of
15 the spent shell casings didn't help is because the West
16 Virginia State Police failed to properly investigate and
17 document where Deputy Forsyth was standing or his
18 position of the weapon when he was shooting at Philip
19 Rhoades. Is that correct?

20 A You couldn't have known it.

21 Q Okay. Well, why couldn't they? Couldn't they
22 ask him where exactly he was standing? They could have
23 questioned Deputy Forsyth about that, couldn't they?

24 A You could've.

25 Q Okay.

1 A But, I mean, you wouldn't have any reliability
2 with that.

3 Q Okay. Well, to the best of his ability, he
4 could have said, this is where I was standing, this is
5 how I held my weapon, things of that nature. That could
6 have been done. Correct?

7 A It could have, but it would have been
8 unreliable at best and I don't think it would have --

9 Q Okay.

10 A I mean, it's basically the same thing, when I
11 made the site visit, I just said, you know, talk me
12 through it and watched, you know.

13 Q Okay. Well, you did the site visit how long
14 after the incident?

15 A I don't -- I don't know.

16 Q Okay. Do you recall the date when you went up
17 there?

18 A I don't.

19 Q Okay. You would agree with -- would you agree
20 with the statement that all killings should be
21 investigated as homicides until proven otherwise?

22 A Yes, sir.

23 Q Okay. Your opinion number four, supplemental
24 number four, is: There is nothing unusual or suspect
25 about Deputy Forsyth and Deputy Love's recollection of

1 the events not being identical.

2 A Correct.

3 Q Again, you can't invade the province of the
4 jury regarding a witness's credibility. Is that
5 correct?

6 A Correct.

7 Q Okay. You're not an expert on memory.

8 A No, sir.

9 Q Okay. You're not an expert on how the brain
10 reacts to stress.

11 A I've had training in it but --

12 Q You don't consider yourself to be an expert in
13 that.

14 A I'm not a psychologist or psychiatrist, no.

15 Q Okay. And you're not an expert on how the
16 brain tracks moving objects. Is that correct?

17 A Correct.

18 Q You're not a crime scene reconstructionist.

19 A No.

20 Q You're not an accident reconstructionist.

21 A No, sir.

22 Q Okay. You state: What is known is that the
23 gears of the vehicle with a manual transmission would
24 have had -- it's bad when you can't read your own
25 typing, let alone handwriting.

1 This is your quote: What is known is that the
2 gears of a vehicle with a manual transmission would have
3 to be disengaged if it was stationary and running.

4 A Yes, sir.

5 Q True statement?

6 A Yes, sir.

7 Q Okay. Would you consider physical evidence to
8 be more reliable than subjective recollections of
9 independent individuals?

10 A It could be.

11 Q Okay. Well, why wouldn't it be?

12 A It depends on what the physical evidence is.

13 Q Okay. Well, you would agree that physical
14 evidence, it is what it is. You can see it, measure it,
15 take pictures of it or whatever. There's no questions
16 in that regard. Is that correct?

17 A Well, let's do it this way. If there were
18 seven casings found and the officer said, I don't know,
19 I think I shot five times, the casings will tell the
20 number of times it was shot.

21 But if the officer said, you know, I was
22 moving here, the casings don't do anything in terms of
23 disproving or proving where the officer was or wasn't at
24 the time that, you know, he pulled the trigger for that
25 specific casing.

1 Q It could or could not be. I mean, if he says,
2 I was here, and they found casings in front of him 50
3 yards away, it would probably disprove that he actually
4 stood in that area where he believed him to be. Then
5 the physical evidence would say, wait a minute, it may
6 not tell you exactly where you are but we know you're
7 not where you're stating you're at. Correct?

8 A That could be.

9 Or, again, it could be due to foot traffic,
10 something was kicked or carried or, you know, there's
11 all kind of possibilities there.

12 Q Okay. But as a matter of principle, physical
13 evidence is more reliable than subjective evidence --

14 A Yeah.

15 Q -- or recollections. Correct?

16 A I would say so.

17 Q Okay. All right. Let me go through some
18 stuff here, I may be about done.

19 A Okay.

20 (Discussion held off the record.)

21 MR. EDWARDS: Mr. Faulkner, that's all the
22 questions I have for you.

23 THE WITNESS: Okay. If I can find that,
24 because his partner used to be Mark Durkin (phonetic)
25 and I'll -- if I can find Mark somewhere, I'll let you

1 know.

2 MS. DURST: Okay.

3 THE WITNESS: And pass that along.

4 MS. DURST: Okay. And we can wait while he
5 burns a copy of those flash drives.

6 You know you have the right to read and sign
7 your transcript or you can waive that right. Do you
8 want to review and sign?

9 THE WITNESS: I'll read it.

10 (Deposition was concluded at 12:15 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

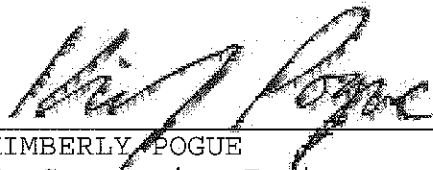
25

1 STATE OF FLORIDA)
 : SS
2 COUNTY OF MARTIN)

3 CERTIFICATE OF OATH

4 I, KIMBERLY POGUE, in my capacity as a Notary
5 Public of the State of Florida at Large authorized to
6 administer oaths on this 2nd day of October, 2019, at
7 9:55 o'clock a.m., SAMUEL DEWITT FAULKNER personally
8 appeared before me and took an oath or affirmation for
9 the purpose of giving testimony in the matter of:
10 CHRISTY J. RHOADES, ETC, VS. COUNTY COMMISSION OF MARION
11 COUNTY, ET AL.

12
13 PERSONALLY KNOWN _____
14 OR PRODUCED IDENTIFICATION-XX
15 TYPE OF IDENTIFICATION PRODUCED-Driver's License

16
17 
18 KIMBERLY POGUE
19 My Commission Expires:
20 March 18, 2022
21 Commission Number GG168230
22 THIS TRANSCRIPT IS DIGITALLY SIGNED.
23 SHOULD THERE BE ANY CHANGE MADE,
24 THE SIGNATURE AND SEAL WILL DISAPPEAR.
25

1 STATE OF FLORIDA)
2 : SS
3 COUNTY OF MARTIN)

4 CERTIFICATE

5 I, Kimberly Pogue, a Shorthand Reporter and
6 Notary Public of the State of Florida at Large, certify
7 that the foregoing deposition of SAMUEL DEWITT FAULKNER
8 was stenographically reported by me and is a true and
9 accurate transcription of said deposition of SAMUEL
10 DEWITT FAULKNER; that a review of the transcript was
11 requested.

12 I further certify I am neither attorney nor
13 counsel for, nor related to, nor employed by any of the
14 parties to the action in which the deposition is taken
15 and, further, that I am not a relative or an employee of
16 any attorney or counsel employed in this case, nor am I
17 financially interested in the outcome of this action.

18 DATED this 11th day of October, 2019.

19

20

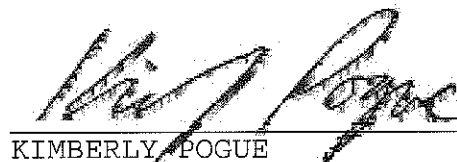
21

22

23

24

25



KIMBERLY POGUE

THIS TRANSCRIPT IS DIGITALLY SIGNED.
SHOULD THERE BE ANY CHANGE MADE,
THE SIGNATURE WILL DISAPPEAR.